



LEGAL ISSUE ON CHILD LABOUR REGULATIONS: A COMPARATIVE STUDY
BETWEEN THE UNITED STATES THAILAND AND INDIA

BY

MS. VASUMA SUTTIVANICH

AN INDEPENDENT STUDY PAPER SUBMITTED IN PARTIAL FULFILMENT OF
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Independent Study Title : Legal Issue on Child Labour Regulations: A Comparative Study between the United States Thailand and India

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ABSTRACT

The purpose of this research concerns on child labour issue under the Labour Protection Act, B.E. 2541 because the violation of child labour has been occurred for a long time. It indicates the regulation cannot protection the fundamental rights and the benefits of the child labour. Likewise, the regulation also lacks of modernity. On this research, the child labour issue should be analyzed to apply or improve in the Labour Protection Act, B.E. 2541 to protect the fundamental rights and the benefits of the child employees as much as possible.

From the analysis, this research found the regulation on child labour of Thailand does not provide meaning of the legal terms like “child” and “child labour” which are caused legal issue on interpretation; narrow and wide because it should be provided under the provision due to protection the fundamental rights and providing the benefits to child labour. While, lacks of legal harmonized between Section 44 of the Labour Protection Act, B.E. 2541 and Section 24 of Civil and Commercial Code because it is caused legal conflicted due to age of employment of child labour. Furthermore, the minimum wage rate of employment of child labour is not legislated under the Labour Protection Act, B.E. 2541 It means the regulation does not concern on protection the fundamental right of child labour and it is also caused child labour issue. Besides, providing the element welfare of child labour which is in the area of the fundamental rights of child labour under the Labour Protection Act, B.E. 2541 seems to compel the children to labour market instead of concerning on quality of life and living of child labour.

This Independent Study presents the objective recommendation on revising the amendment of the Labour Protection Act, B.E. 2541 to concern on providing meaning of the terms “child” and “child labour”, age, minimum wage rate, and element welfare to avoid or to reduce legal issue in the future due to interpretation; narrow and wide.

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Vasuma Suttivanich

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Chapter 1

Introduction

1.1 Background and General Statement of the Problem

Child labor has been widespread around the world since ancient times, with many countries still facing this challenging issue. Child labor is also a significant barrier to children's growth and development, impacting their physical and mental health, as well as moral. Likewise, the employment of children poses a threat to their human dignity due to the violation and exploitation of fundamental rights, especially forced labor and child trafficking. Unfortunately, the issue of child labor has been prevalent in developing countries like Thailand, India, etc. for a long period of time since they need labor to drive economic growth and increase business benefits, including maintaining the Gross Domestic Production (GDP). In contrast, child labor was widespread in the United States, a developed economy, during the industrial revolution. Children have been permitted to perform light and non-hazardous work since 1938 under the Fair Labor Standards Act, 1938.

Furthermore, many factors drive the employment of children in both developed and developing countries due to business growth, socioeconomic benefits, culture, traditions, and politics.¹ According to Humanium (2020), the global child population is over 2.2 billion. Approximately 2 billion children live in developing countries² such as Thailand, India, Nepal, Bangladesh, and Myanmar, many of whom are employed. According to the International Labour Organization (ILO), in 2016, 152 million children aged between 5 and 17 years were employed around the world (88 million boys and 64 million girls).³ Approximately 73 million of these children are employed in hazardous work.⁴

¹ Gamini Herath and Kishor Sharma, Child Labour in South Asia, 2nd ed. (United States: Routledge Publishing Co., 2016), pp.103.

² Humanium, Children in The World, <https://www.humanium.org/en/children-world/>, (accessed May 21, 2020).

³ International Labour Organization, Child Labour, <https://www.ilo.org/global/topics/child-labour/lang--en/index.htm>, (accessed May 21, 2020)

⁴ Ibid.

The employment of child labor is widespread around the world. Children aged between 5 and 11 years represent 48% of the 152 million employed, with 28% and 24% aged between 12 and 14 years, and 15 and 17 years, respectively, according to the ILO.⁵ The agricultural sector is responsible for 70.9% of child labor, with 11.9% of children working in industry and the remaining 17.2% in services. The continent of Africa has the highest level of child labor in the world at 19.6%, followed by Asia and the Pacific with 7.4%, America (5.3%), Europe and Central Asia (4.1%), and finally the Arab States (2.9%).⁶ Actually, many children are employed in sectors such as agricultural, seafood, travel and tourism, mining, construction and real estate, and consumer goods (manufacturing).

These figures indicate that a significant number of children are employed as child labor around the world. Child labor results in exploitation and violates children's rights as well as national and international law since all children have fundamental rights according to the United Nations Convention on the Rights of the Child, 1989 (CRC)⁷ and its constitution. Meanwhile, the Minimum Age Convention, 1973 (No.138)⁸ provides that the minimum working age for children is 15 years, with 13 years for light work.⁹ This is the international standard for the employment of children. Thus, this means that the employment of children below the age of 15 years is prohibited, although light and non-hazardous work is permitted under the law. On the other hand, many children need to work for survival and help their families. Some children are treated as slaves

⁵ International Labour Organization, Global estimates of child labour: Results and trends, 2012–2016 (Switzerland: ILO Publications., 2017), p.5., https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575499.pdf, (accessed May 21, 2020)

⁶ Ibid.,

⁷ UNICEF, Convention on the Rights of the Child 1989, https://www.unicef.org/csr/css/CRC-C-GC-16_en.pdf, (accessed visited May 21, 2020)

⁸ International Labour Organization, C138 – Minimum Age Convention, 1973 (No.138), at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138, (accessed May 21, 2020)

⁹ International Labor Organization, International Labour Standards on Child Labour, <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/child-labour/lang--en/index.htm>, (accessed May 21, 2020).

and forced to work under conditions of exploitation.¹⁰ Indeed, all member countries of the ILO have a duty to comply with the ratified conventions and also employ measures to eliminate child labor, discrimination, forced labor, prostitution, exploitation, hazardous work, and slavery under the Worst Forms of Child Labour Convention, 1999 (No.182).¹¹

Moreover, the employment of children obstructs their education, health, and body strength, all of which are necessary for growth and development.¹² Likewise, the problems caused by child labor can be divided into four pillars: social, economic, political, and national security. These factors are also influential in children feeling pressurized by employers to work under dishonest and exploitative conditions.¹³ Hence, the child labor problem is challenging for governments because it is not easy to find a solution due to the complications involved, such as needing labor to support economic growth and benefit businesses, while maintaining the GDP. Many factors are at the root of the child labor problem,¹⁴ especially in developing countries. Meanwhile, the fundamental rights of all children are protected under international law and International Labour Standards (ILS), such as the conditions of child employment. To this end, the ILO implemented a project to eliminate child labor in 1992, known as the International

¹⁰ Maki Okusa, "Child Labour in Asia: Challenges and Responses of the International Labour Organization in Thailand and India," (M.A. thesis, Graduate School, University of Oregon, 2008), p.1.

¹¹ International Labour Organization, C182 – Worst Forms of Child Labour Convention, 1999 (No.182). https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182, (accessed May 21, 2020)

¹² Deepsi Rawat, Vijay Srivastava, Shamrendra Vikram, "Status of Child Labour in India: Problems and Challenges, an analysis," Journal of Law (Issue 3. March 2020), https://www.ijrrjournal.com/IJRR_Vol.7_Issue.3_March2020/IJRR0010.pdf. (accessed May 21, 2020)

¹³ Ibid.,

¹⁴ Maki Okusa, "Child Labour in Asia: Challenges and Responses of the International Labour Organization in Thailand and India," (M.A. thesis, Graduate School, University of Oregon, 2008), p.3.

Programme on the Elimination of Child Labour (IPEC).¹⁵ Many organizations are involved in the project, such as the United Nations Children's Fund (UNICEF) and non-governmental organizations (NGOs)¹⁶ with the aim of eliminating and reducing the employment of children.¹⁷

However, the elimination of child labor in developing countries such as Thailand presents a challenge for the Thai government due to its effect on economic growth and business. Moreover, the employment of children has been widespread in many provinces in the country for a long time. The statistics show that 13% of children in Thailand between the ages of 5 and 14 were employed in 2017, with 14.7% aged between 7 and 14 years, combining work and school.¹⁸ Some of these children are employed to perform Thai kickboxing, also known as *Muay Thai*.¹⁹ However, the prohibition of child employment causes the rate of child labor to increase, both directly and indirectly since many children are forced to work by their parents due to poverty, education, and quality of life. On the other hand, illegal child labor is likely to reduce by permitting children to perform light and non-hazardous work. The Thai regulations on child labor, known as the Labour Protection Act, B.E. 2541 in Chapter 4 provides definitions for the terms "child" and "child labor" as well as the elements of child employment, such as age, working hours, overtime, holiday, wages, welfare, and type of work, not provided for under the Act. The Thai government should support the needs of children employed in light and non-hazardous work.

Additionally, ratification of the international convention is also essential for members of the ILO. It is also the duty of the government to revise national law so that

¹⁵ International Labour Organization, About the International Programme on the Elimination of Child Labour (IPEC), at <https://www.ilo.org/ipec/programme/lang--en/index.htm>, (accessed May 21, 2020).

¹⁶ Maki Okusa, "Child Labour in Asia: Challenges and Responses of The International Labour Organization in Thailand and India," (M.A. thesis, Graduate School, University of Oregon, 2008), p.3.

¹⁷ Ibid., p.2.

¹⁸ Refworld, 2017 Findings on the Worst Forms of Child Labor, at <https://www.refworld.org/pdfid/5bd05af50.pdf>, (accessed 21 May 2020).

¹⁹ Ibid.

it complies with the international convention. Indeed, Thailand and India are member countries of the ILO, which means that both governments have a duty to revise labor law to comply with the international convention. The Thai government has ratified 19 conventions and one protocol²⁰ while the Indian government has ratified 47 conventions and one protocol²¹, according to the ILO. Likewise, violation of the international convention does not have the power to punish countries violating the international convention but can impose sanctions by way of punishment. Actually, as a member of the ILO, the Thai government has not revised the Labour Protection Act, B.E. 2541 to comply with the international convention. As a result, countries like the United States, United Kingdom, and European Union suspended GSP privileges, banning the import of seafood, while the ICAO placed a red flag against Thai Airways on their website. Hence, this independent study examines the principles of child labor regulation in Thailand, India, and the United States. This is also a comparative study involving Thailand, India, and the United States on the principles of law with respect to human dignity.

1.2 Research Hypothesis

As indicated in the introduction, many children are employed, some of whom have been working from a very young age for social and economic reasons. Some are victims of sexual exploitation, human trafficking, and forced labor. Furthermore, numerous internal factors result in child labor such as social, economic, political, and national security. Unfortunately, the national child labor regulations in Thailand, known as the Labour Protection Act, B.E. 2541, is not separately legislated and includes no provision under the terms “child” and “child labor”. Indeed, the lack of clarity for the terms “child” and “child labor” also causes legal issues since they are open to both narrow

²⁰ International Labour Organization, *Ratification for Thailand*, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102843, (accessed May 21, 2020).

²¹ International Labour Organization, *Ratification for India*, https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102691, (accessed May 21, 2020).

and wide interpretation. Thus, the Act does not contain sufficient provisions to protect the employment rights of children.

Moreover, child employment law in the entertainment industry creates conflict due to the age of employees because Section 44²² of the Labour Protection Act, B.E. 2541 specifies the minimum age at which children can be employed is 15 years but the provisions in Section 24²³ of the Civil and Commercial Code states that minors are able to work under the appropriate conditions of life and need. Consequently, the Labour Protection Act, B.E. 2541 should be revised to clarify the meaning of the terms “child” and “child labor” under the conflicting provisions of Section 44 of the Labour Protection Act, B.E. 2541 and Section 24 of the Civil and Commercial Code. Likewise, it is important that both regulations are harmonized to avoid misinterpretation and legal issues.

Furthermore, the minimum wage rate is not provided under the regulation; the Labour Protection Act, B.E. 2541 because the regulation of child labour in Thailand is not legislated separately. Indeed, the Labour Protection Act, B.E. 2541 also enforce on adult labour. While, the minimum wage rate of adult labour is provided by the National Wage Committee.²⁴ It indicates the minimum wage rate of adult labour is concerned more than the minimum wage rate of child labour.

While, the element welfare; cleanliness, disposal of water, lighting, drinking water, and etc. should be provided under the Labour Protection Act, B.E. 2541 because it is the fundamental right of the child labour and it connects to quality of life of child labour, indeed, the element welfare should be provided instead of provided of joining any seminar and training skill. Thus, it indicates the Labour Protection Act, B.E. 2541 concerns on training skill more than providing the element welfare to the child labour

²² Office of the Council of State, The Labour Protection Act, B.E.2541, http://web.krisdika.go.th/data/outsitedata/outside21/file/LABOUR_PROTECTION_ACT_B.E._2541.pdf, (accessed May 21, 2020).

²³ Thailand Lawyer, Natural Persons (Section 15–36), <https://library.siam-legal.com/thai-law/civil-and-commercial-code-natural-persons-sections-15-36/#tabs-tab-title-2>, (accessed May 21, 2020).

²⁴ Minister of Labour, the National Wage Committee’s Notification on New Minimum Wage Rate (No.10), <https://www.mol.go.th/wp-content/uploads/sites/2/2020/01/Prakadwage10-6Jan2020.pdf> (accessed May 21, 2020).

which relate to quality of life of the child labour. While, concerning training skill of the child labour seems to be compelled the children to labour market.

Additionally, the child labor issue is addressed by international organizations such as the ILO and United Nations (UN), both of which operate under international conventions: the Minimum Age Convention, 1973 (No.138),²⁵ the Worst Forms of Child Labour Convention, 1999 (No.182),²⁶ and the United Nations Convention on the Rights of the Child, 2013 (CRC)²⁷ as international standards relating to children. The Minimum Age Convention, 1973 (No.138) and the Worst Forms of Child Labour Convention, 1999 (No.182) are legislated by the ILO, providing conditions of employment and protecting the fundamental rights of the child. Similarly, the CRC is legislated by the UN to protect the fundamental rights of children as well as their employment.

1.3 Research Objectives

- 1.3.1 To study concepts and background of child labour
- 1.3.2 To study child labour regulations under international and national law.
- 1.3.3 To comparative and analysis of the regulation on child labour.
- 1.3.4 To conclude and recommendations.

1.4 Research Methodology

This independent study consists of documentary research and the analysis of data on the Labour Protection Act, B.E. 2541 of Thailand, the Child and Adolescent Labour (Prohibition and Regulation), 1986 of India, and the Fair Labor Standards Act, 1938 of the United States (FLSA), as well as the convention on child labor of the ILO.

²⁵ International Labour Organization, C138 – Minimum Age Convention, 1973 (No.138), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P1_2100_ILO_CODE:C138, (accessed May 21, 2020).

²⁶ International Labour Organization, C182 – Worst Forms of Child Labour Convention, 1999 (No.182), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182, (accessed May 21, 2020).

²⁷ UNICEF, Convention on the Rights of the Child 2013, https://www.unicef.org/csr/css/CRC-C-GC-16_en.pdf, (accessed May 21, 2020).

The results of the data analysis can also be used to provide recommendations on the revision of child labor regulations in Thailand to comply with the ratified international convention and compare the regulations among Thailand, India, and the United States. Finally, this independent study analyzes the key factors involved in child labor problems under the principles of the labor law in Thailand, India, the United States, and the conventions on child labor, with the aid of books, articles, theses, reports, news, and electronic media.

1.5 Scope of the Research

This independent study aims to examine the principles behind the regulations on child labor in Thailand, India, and the United States, and the lack of clear definitions for the terms “child” and “child labor”, including the employment of children to work in the entertainment industry. Indeed, the employment of children in the entertainment industry is subject to the conflicting laws of the Labour Protection Act, B.E. 2541 and Civil and Commercial Code due to the age of the employee. While, lacks of providing the minimum wage rate of child labour is caused exploitation to child labour because the Labour Protection Act, B.E. 2541 does not protect the rights of the child labour due to lacks providing the minimum wage rate of child labour. Likewise, the Labour Protection Act, B.E. 2541 does not legislate providing the element welfare to child labour, such as cleanliness, disposal of water, lighting, drinking water, and etc., indeed, it should be legislated under the Act to protect the fundamental right of the child labour. Moreover, a comparative study is undertaken on the regulations between Thailand, India, and the United States. Finally, this independent study also examines international law as the standard of employment for children.

1.6 Research Expectations

1.6.1 To understand concepts and background of child labour in developed and developing countries.

1.6.2 To understand child labour regulations under international and national law.

1.6.3 To get result of comparative and analysis of the regulation of child labour.

1.6.4 To give conclusion and recommendation.

Chapter 2

Concepts and Background of Child Labor

Employment has been driving economic growth and benefiting businesses around the world for a considerable time, with child labor being especially prevalent in developing countries such as Thailand, India, etc. Since many sectors need labor to support their businesses, numerous factories have also been established in developing countries due to location of the labor market and low wages. Meanwhile, many factors support the employment of child labor, such as poverty, education, health, parents with disabilities, and living standards. These affect children by obstructing their development and growth, including mental and physical health, and morality. Actually, child labor is damaging to the dignity of humans and violates national and international law by exploiting children and their rights under the United Nations Convention on the Rights of Child, 2013 (CRC)²⁸, the Minimum Age Convention, 1973 (No.138),²⁹ and the Worst Forms of Child Labour Convention, 1999 (No.182).³⁰ Developing countries like Thailand and India as well as developing countries such as the United States have employed children for hundreds of years. However, the United States have national laws under which children are permitted to participate in light and non-hazardous work.

Furthermore, it is essential that the terms “child” and “child labor” are clearly defined to enable the law to effectively protect child employees. However, the Labour Protection Act, B.E. 2541 does not provide sufficient protection and this will cause legal issues regarding the determination of its terms in the future. Meanwhile, international law provides a definition for the term “child” under the Minimum Age Convention, 1973

²⁸ Unicef, Convention on the Rights of the Child 2013, https://www.unicef.org/csr/css/CRC-C-GC-16_en.pdf, (accessed May 21, 2020).

²⁹ International Labour Organization, C138 – Minimum Age Convention, 1973 (No.138), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138, (accessed May 21, 2020).

³⁰ International Labour Organization, C182 – Worst Forms of Child Labour Convention, 1999 (No.182), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182, (accessed May 21, 2020).

(No.138)³¹ and the Worst Forms of Child Labour Convention, 1999 (No.182)³². Furthermore, both conventions have been ratified by the Thai government³³ which has a duty to comply with the related conventions, especially those it has ratified. However, the Thai government needs to revise its national employment law to comply with the ratified conventions. Besides, international law differs from national law because the former imposes no penalties. Thus, sanctions can be defined as penalties under international law for countries in violation of it. Actually, Thailand has had sanctions imposed on it by the United States, United Kingdom, and European Union. For example, the suspension of Thailand's GSP privileges by the United States, the red flag of Thai Airways by ICAO, and banning imported seafood from Thailand due to the exploitation and violation of fundamental labor rights, especially child labor, since many children are employed in industries such as seafood and agriculture. Hence, this chapter presents a definition for the term "child labor" under national and international law. The concepts of these terms are also presented under international and national law in relation to Thailand, India, and the United States, as well as the background and effects of the child labor problem in these countries.

2.1 Concept of Child Labor

2.1.1 International

Many international regulations are in force at the present time. International regulations on child labor, known as conventions are also provided by the ILO. Indeed, the Worst Forms of Child Labour Convention, 1999 (No.182) provides a definition

³¹ International Labour Organization, International Labour Standards on Child Labour, <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/child-labour/lang--en/index.htm>, (accessed May 21, 2020).

³² Ibid.,

³³ International Labour Organization, Ratifications for Thailand, https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102843, (accessed May 21, 2020).

for the term “child” under Article 2³⁴ as any person under the age of 18 years. However, this Convention and the Minimum Age Convention, 1973 (No.138) do not clarify the meaning of the term “child labor” but it is defined by the ILO as any work which deprives children of their childhood, development, and dignity. It is also harmful to the physical and mental health of children as well as their growth,³⁵ according to the ILO. Additionally, the meaning of the term “child” is provided by Article 1³⁶ of the United Nations Convention on the Rights of the Child (UNCRC) as all humans under the age of 18 years.

2.1.2 Developed Countries

The term “child” is defined under §6501 (1)³⁷ of the United States Code as an individual under the age of 13 years, although it does not provide a definition for the term “child labor”. However, Volume 143, Issue 125, page S9631 of the Congress Code (September 18, 1977)³⁸ defines the term “child labor” as an international standard rather than an American. Therefore, the meaning of the term “child labor” under United States law is based on the Minimum Age Convention, 1973 (No.138).³⁹ Unfortunately, labour law in the United States, known as the Fair Labor Standards Act, 1938 (FLSA),

³⁴ International Labour Organization, C182 – Worst Forms of Child Labour Convention, 1999 (No.182), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::NO:12100:P12100_ILO_CODE:C182:NO, (accessed May 21, 2020).

³⁵ International Labor Organization. What is Child Labour?, <https://www.ilo.org/ipec/facts/lang--en/index.htm>, (accessed May 21, 2020).

³⁶ United Nations Human Rights Office of the High Commissioner, Convention on the Rights of the Child, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>, (accessed May 21, 2020).

³⁷ United States Government Information, §6501 TITLE 15 – COMMERCE AND TRADE, <https://www.govinfo.gov/content/pkg/USCODE-2011-title15/pdf/USCODE-2011-title15-chap91-sec6501.pdf>, (accessed May 21, 2020).

³⁸ United States Government Information, CONGRESSIONAL RECORDED -- SENATE, at <https://www.govinfo.gov/content/pkg/CREC-1997-09-18/pdf/CREC-1997-09-18-pt1-PgS9631-2.pdf>, (accessed May 21, 2020).

³⁹ Ibid.

does not provide a definition for the term “child labor”, but it can be defined as any work performed by teenagers.⁴⁰ In contrast, the Act defines the term “oppressive child labor” rather than “child labor” as the employment condition of children aged between 16–18 years under 29 U.S. Code § 203(1) of the Fair Labor Standards Act, 1938.⁴¹

2.1.3 Developing Countries

Two developing countries are mentioned in this study: Thailand and India, both of which have child labor regulations. However, Thai labor law, known as the Labour Protection Act, B.E. 2541 does not provide meanings for the terms “child” and “child labor”. In contrast, the Child Protection Act, B.E. 2546, Section 4 paragraph 1⁴² defines the term “child” as any person below the age of 18 years but does not include marriage under the age of majority. Meanwhile, the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, known as child labor in India, does not provide a meaning for the term “child labor” but defines the term “child” as any person below the age of 14 years under Article 2(ii).⁴³ Hence, there are no definitions for the term “child labor” under the Labour Protection Act, B.E. 2541, the Child Protection Act, B.E. 2546, including the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 in India.

⁴⁰ Shodhganga, CHAPTER – VII CHILD LABOUR IN UNITES STATES OF AMERICA, UK, RUSSIA, CHINA, SOUTH AFRICA, SOUTH ASIA, AND OTHER COUNTRIES: A COMPARATIVE ANALYSIS, https://shodhganga.inflibnet.ac.in/bitstream/10603/95694/15/15_chapter%207.pdf, (accessed May 21, 2020).

⁴¹ Office of the Law Revision Counsel, United States Code, 29 USC Ch. 8 FAIR LABOR STANDARDS, <https://uscode.house.gov/view.xhtml?path=/prelim@title29/chapter8&edition=prelim>, (accessed May 21, 2020).

⁴² Office of the Council of State, The Child Protection Act, B.E. 2546, http://web.krisdika.go.th/data/outsitedata/outside21/file/CHILD_PROTECTION_ACT_B.E._2546.pdf, (accessed May 21, 2020).

⁴³ India Code, The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, https://www.indiacode.nic.in/bitstream/123456789/1848/5/a1986__61.pdf, (accessed May 21, 2020).

2.2 Types of Child Labor

2.2.1 Work Outside the Home

Work outside the home can be divided into three sectors: agricultural, services, and industry.⁴⁴ The agricultural sector consists of farming, fishing, and forestry, while the services sector includes street trade, begging, domestic facilities, restaurants, and transportation. The industry sector includes manufacturing, mining, and construction. Unfortunately, children involved in these sectors are often unpaid.⁴⁵

2.2.2 Family Work

Family work refers to any work children may undertake on behalf of their families, including agricultural activities and participating in businesses owned by the family. Children are usually not paid for family work.⁴⁶

2.2.3 Housework

Housework includes childcare, eldercare, cleaning, cooking, laundry, shopping, fetching water and wood, and home maintenance.⁴⁷ However, such work undertaken by children can be considered as child labor and is normally unpaid rather than paid, often involving overtime.⁴⁸

⁴⁴ United States National Library of Medicine National Institutes of Health, Girls' and Boys' Labor and Household Chores in Low-and Middle-Income Countries, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5860687/>, (accessed May 21, 2020).

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

2.2.4. Other Types

There are other types of child labor which fall under the provisions of the Worst Forms of Child Labour Convention, 1999 (No.182)⁴⁹ and divided into the following seven categories:⁵⁰

1. Slavery refers to a person who forces another to work and does not allow them to leave, refuse, or stop work. In fact, some children are held captive by their parents.⁵¹

2. Child trafficking is one type of human trafficking or trafficking in person. The buying, selling, and movement of children for labor or sexual exploitation purposes is illegal. There are many reasons for child trafficking, such as forced labor, prostitution, street begging, and recruiting child soldiers.⁵²

3. Debt bondage is a type of forced labor where children have to work to repay a debt, for example, if the family is unable to satisfy the debt due to low income or other reasons. For instance, poor families living in rural or urban areas of Thailand often have many children, and they send them to work until the debt is paid.⁵³

4. Serfdom is similar to slavery but involves the person being forced to work and live on the land or place belonging to the employer, and includes working without pay or on a low wage.⁵⁴

⁴⁹ International Labour Organization, C182 – the Worst Forms of Child Labour Convention, 1999 (No.182), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182, (accessed May 21, 2020).

⁵⁰ International Labour Organization, The Worst Forms of Child Labour, <https://www.ilo.org/ipec/Campaignandadvocacy/Youthinaction/C182-Youth-orientated/worstforms/lang-en/index.htm>, (accessed May 21, 2020).

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

5. Forced labor refers to a person forced to work in conflict with their wishes, such as employing children to fight in armed conflict or using child labor for both light and heavy work.⁵⁵

6. Sexual exploitation can be defined as prostitution, pornography, and pornographic performance. It includes violation, abuse, taking advantage of children for personal purposes such as prostitution and commercial sexual activity. Prostitution involves exchanging sexual activities for benefits like money.⁵⁶ However, pornography is not similar to prostitution but classed as sexual exploitation because it seeks to benefit from sexual images of children and these images can be bought by someone,⁵⁷ abusing and violating the rights of children. It also poses a high risk to children due to the physical and mental abuse involved. Children feel violated by the bad experience, making it hard for them to remove it from their lives.⁵⁸

7. Illicit activities can involve any crime or illegal activity, such as producing and trafficking drugs, stealing goods, robbery, hijacking, theft, or terrorism.⁵⁹ They can also include crimes committed by the children as part of a gang. Children forced to perform any illegal activity are often violated and their rights abused which affects their physical and mental wellbeing.⁶⁰

2.3 Factors and Effects of Child Labor

2.3.1 Factors

Developing countries, such as Thailand, India, Nepal, Bangladesh, Africa, Somalia, Myanmar, Democratic Republic of Congo, Sudan, Pakistan, Afghanistan, Brazil,

⁵⁵ International Labour Organization, *The Worst Forms of Child Labour*, <https://www.ilo.org/ipec/Campaignandadvocacy/Youthinaction/C182-Youth-orientated/worst-forms/lang--en/index.htm>, (accessed May 21, 2020).

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

Yemen, etc.,⁶¹ have faced the child labor issue for a long period of time due to the various factors involved in the employment of children. For instance, poverty, education, health, living standards, gender, age, attitude, and beliefs all affect the growth and development of child employees, as well as their mental and physical health and moral. The employment of children is a long-standing global issue, due to the violation of rights involved, such as forced labor, sexual exploitation, child trafficking, and the damage caused to human dignity. Indeed, organizations such as the ILO and UN are heavily involved in this issue. However, many developing countries attract foreign investors, establishing factories and employing workers on low wages. Hence, the factors affecting the employment of children can be divided into four pillars: social, economic, political, and national security.

1. Social Factors

The social pillar concerns beliefs, attitudes, gender, and social welfare because these affects how people fit into society. Beliefs can be defined as tradition and culture, and some beliefs relate to the way of life for Thai people, especially the attitude of adults toward child employees, parents toward education, and the respect of children toward adults.⁶² The majority of adults have a good attitude toward children who diligently work to support their family to avoid poverty, but certain types of work may be frowned upon by adults, like working in a pub, bar, or parlor because they consider it inappropriate. Consequently, the attitude of adults toward children who work in these areas are difficult to accept. According to Thai culture and traditions, children must respect any person who is older, especially adults, without any argument.⁶³ Meanwhile, attitude of parents toward education is very influential, especially those from poor families because education is considered to be essential for children,

⁶¹ Katie Hunt, The 10 worst countries for child labor, <https://edition.cnn.com/2013/10/15/world/child-labor-index-2014/index.html>, (accessed May 21, 2020).

⁶² Nawarat Phlainoi, Investigating the Worst Forms of Child Labour No.23 Thailand Child Domestic Workers: A Rapid Assessment, p.4.

⁶³ Ibid., p.15.

but some poor families send their children to work instead of school because of adverse financial conditions and the need to increase their income.⁶⁴

Furthermore, the social culture, traditions, or beliefs in India are similar to Thailand but Thai society does not have social discrimination like the caste system of India. The caste system has existed in Indian society for a long time. It is based on Hindu beliefs and affects the way of life of Indian people but from the international perspective, it is social discrimination. The caste system affords those considered to be upper class many more privileges than the lower class.⁶⁵ Children in the Dalit class are employed to work in agricultural and hazardous sectors: manual scavenging and mining, garment manufacturing, carpet weaving, leather goods, and construction. According to the International Dalit Solidarity Network (IDSN)⁶⁶, girls in the Dalit class are often employed as child prostitutes. Moreover, since the caste system is discriminatory, it is a major contributory cause of utmost poverty and there is a lack of opportunity for many Dalit families, such as the provision of education for their children.⁶⁷ The Dalits in India are very poor, according to the World Bank.⁶⁸ However, there is another form of social discrimination in India, which relates to the belief that a person is a slave of god, known

⁶⁴ Franziska Humbert, The Challenge of Child Labour in International Law, 1st ed. (United States: Cambridge University Press), p.26.

⁶⁵ Deutsche Welle, India's Caste System: Weakened, but still influential, <https://www.dw.com/en/indias-caste-system-weakened-but-still-influential/a-39718124>, (accessed May 21, 2020)

⁶⁶ International Dalit Solidarity Network, Caste discrimination, child labour and the Nobel prize, <https://idsn.org/caste-discrimination-child-labour-and-the-nobel-peace-prize-winner/>, (accessed May 21, 2020).

⁶⁷ Ibid.

⁶⁸ Child Rights International Network, Discrimination: Briefing on Dalit and The Caste System, <https://archive.crin.org/en/library/publications/discrimination-briefing-dalit-and-caste-systeme24d.html>, (accessed May 21, 2020).

as a devadasi or devaradiyar.⁶⁹ Girls are married to god and become a sex slave.⁷⁰ Devadasis is a belief practiced in the Southern States of India; Andhra, Pradesh, and Karnataka. Unfortunately, the duties of a devadasi generally fall to Dalit girls.⁷¹ Most devadasis have limited access to opportunities such as health care, education, and housing.⁷² Devadasi girls incapable of being married are forced to work as prostitutes for members of the upper-caste and sold to urban bordellos.⁷³ Thus, beliefs can indicate social discrimination, as in the case of the caste system and the devadasis in India since they affect people's livelihoods and influence social attitudes, both Thai and Indian. However, Thai society does not have beliefs which result in social discrimination but the attitudes of some Thai adults toward children may be affected by the different types of work they undertake. The attitude of poor parents toward education is quite sad since the financial conditions often mean that the children are illiterate, ultimately affecting their future livelihoods.

Moreover, gender influences the employment of children because girls tend to be victims of sexual exploitation, such as prostitution and pornography.⁷⁴ Unfortunately, some girls are forced to work for sexual commercial purposes.⁷⁵ Both Thailand and India have gender issues regarding employment because children, especially girls, are often forced to undertake domestic work by their parents. Girls living in rural areas are frequently forced to start working earlier than boys because they accompany their parents to work. According to UNICEF, girls start domestic work at eight or nine

⁶⁹ Krithiha Rajam, How Devadasis went from having high social status to being sex slaves and child prostitution, <https://yourstory.com/2017/04/devadasis-india>, (accessed May 21, 2020).

⁷⁰ Child Rights International Network, Discrimination: Briefing on Dalit and The Caste System, <https://archive.crin.org/en/library/publications/discrimination-briefing-dalit-and-caste-systeme24d.html>, (accessed May 21, 2020).

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ The Borgen Project, 10 Shocking Facts About Child Poverty in Thailand, <https://borgenproject.org/tag/child-labor-in-thailand/>, (accessed May 21, 2020).

⁷⁵ Ibid.

years old.⁷⁶ Many girls also work in the agricultural sector and are often paid less than boys.⁷⁷ Actually, according to UNICEF, parents prefer their daughters to work rather than the sons, since in Indian tradition, most of the work is household-related and classed as women's work.⁷⁸ However, this does not mean boys are not exploited as child labor; they work in the agricultural, fisheries, services, as well as the hazardous mining sector. Thus, gender is an influential factor in child labor since it is also connected to social factors because it relates to people who live in the same social circle. However, it means that more girls are employed than boys for commercial sexual purposes, while boys tend to undertake more hazardous work.

The final factor under this pillar is social welfare. Although social welfare may be defined in various ways, in this case, it relates to education and health, only because these are strongly related to the child labor issue in developing countries like Thailand and India. To begin with, in Thailand, all children who are Thai citizens have the right to be educated free of charge in compulsory education for 12 years under Sections 50(4)⁷⁹ and 54 paragraph 1⁸⁰ according to the Constitution of the Kingdom of Thailand, B.E. 2560. However, the education system tends to inadvertently promote child labor with its lack of quality and not all parents can afford to pay the enrollment fees for their children since they are too expensive⁸¹ and there are also extra expenses such as books, clothes, shoes, stationery, and cost of living. Furthermore, corruption in the Thai education system by officers or directors of educational institutions impacts

⁷⁶ UNICEF, Child labour: Are girls affected differently from boys?, https://www.unicef.org/sowc07/docs/sowc07_panel_3_3.pdf, (accessed May 21, 2020).

⁷⁷ UNICEF, Child Labour in Bangladesh and India: A preliminary gender-based analysis, https://www.unicef.org/protection/files/UCW_Gender_summary_TCfinal.pdf, (accessed May 21, 2020).

⁷⁸ Ibid.

⁷⁹ Constitution Drafting Commission, Constitution of the Kingdom of Thailand, https://cdc.parliament.go.th/draftconstitution2/ewt_dl_link.php?nid=1460&filename=index, (accessed May 21, 2020).

⁸⁰ Ibid.

⁸¹ Franziska Humbert, The Challenge of Child Labour in International Law, 1st ed. (United States: Cambridge University Press), p.32.

the child labor issue because many poor families cannot support their children in the compulsory education system due to financial conditions. Furthermore, some families with a large number of children living in the rural and urban areas of Thailand cannot provide education to their children due to having insufficient income to pay for the extra expenses involved. These children have to take risks to earn an income to help their families survive and are driven toward work by their parents instead of going to school.⁸²

As a developing country, India, like Thailand, has an education issue relating to child labor with many children who are Indian citizens being sent to work instead of going to school due to parental attitudes and financial conditions. Under Article 21A of the Constitution of India, 1950,⁸³ children who are Indian citizens have the right to be educated with each state under a duty to provide compulsory education for children aged 6–14 years without charge. However, some children cannot access free compulsory education due to the additional expenses involved such as books, stationery, clothes, shoes, and transportation.⁸⁴ According to Jayanta Sarkar and Dipanwita Sarkar, families with financial issues such as a low income cannot send their children to school but choose full-time child labor instead. Income is clearly an influential factor in the employment of children because poor families find the overall cost of education too expensive, and the rising wages for child labor is a major driving factor in forcing children to work instead of going to school.⁸⁵

Education quality is another driver of child labor, especially for girls, because they are employed in domestic work like cleaning, cooking, and housekeeping. Meanwhile, discrimination in Indian society due to the caste system also drives the

⁸² Franziska Humbert, *The Challenge of Child Labour in International Law*, 1st ed. (United States: Cambridge University Press), p.26.

⁸³ India Government: National Portal of India, *The Constitution of India*, https://www.india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf, (accessed May 21, 2020).

⁸⁴ Jayanta Sarkar and Dipanwita Sarkar, *Unequal Access to Education Leads to Child Labour in India: Study by India – Origin Researchers*, <https://www.indiatoday.in/education-today/news/story/child-labour-in-india-265484-2015-09-29>, (accessed May 21, 2020).

⁸⁵ Ibid.

employment of children. It affects education because many girls are Dalits, and discriminated against by being unable to access primary level education. Besides, according to Rikke Nohrlind and Gerard Oonk, there are about 200 million Dalits in India.⁸⁶

Health is also related to the child labor issue in developing countries like Thailand and India since many child employees are involved in hazardous work. Working overtime and hazardous work impact the growth and development of child employees, affecting their physical and mental wellbeing. Likewise, many girls have been infected with HIV/AIDS by being forced to work for commercial sexual purposes, such as prostitution, pornography, and pornographic performances. Some are also victims of child trafficking. Unfortunately, in India, some children, especially girls, are forced to work as prostitutes while others are forced into marriage.⁸⁷ However, many types of work are hazardous, causing harm to children's health: agriculture being the most hazardous⁸⁸ due to the long hours involved, depending on the demand in each season.⁸⁹ Generally, hazardous work includes plantation vehicles, chemicals, and biological processes.⁹⁰ Unfortunately, according to Humanium, some children are sold by their families to pay off debts and taken to work in textile factories.⁹¹ This shows that the Indian government is failing to protect the health and welfare of children.

Finally, the first social pillar, consisting of beliefs, attitudes, gender, social welfare, education, and health is found to be influential in the creation of child

⁸⁶ Rikke Nohrlind and Gerard Oonk, Diluting India's child labour law will trap families in cycle of poverty, <https://www.theguardian.com/global-development/2015/may/18/india-child-labour-law-families-poverty>, (accessed May 21, 2020).

⁸⁷ UNICEF, Child Labour and Exploitation, <https://www.unicef.org/india/what-we-do/child-labour-exploitation>, (accessed May 21, 2020) .

⁸⁸ Shodhganga, Chapter – 7 Effect of Child Labour on Health and Future, https://shodhganga.inflibnet.ac.in/bitstream/10603/23071/11/11_chapter-7.pdf, (accessed May 21, 2020).

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Humanium, Child Labour, <https://www.humanium.org/en/child-labour/>, (accessed May 21, 2020).

labor. However, financial conditions also play an important role, as discussed in the following section.

2. Economic

The economic pillar is essential because it affects the livelihoods of people, and everyone needs money to survive. This second pillar is strongly related to poverty which is a major contributory factor to the employment of children in developing countries, with Thailand and India being crucial to breaking the cycle.⁹² Moreover, poverty is the greatest driver of child labor at the present time due to the financial situation of many families, according to the ILO.⁹³ According to SOS Children's Villages, there is extreme poverty in India, with over 800 million people considered to be poor people due to lack of employment, income, or low income.⁹⁴ Furthermore, the attitude of the poor in India toward child labor is harmful because most believe in the concept "more hands, more income", which forces children to work.⁹⁵ They believe that more working family members will increase the total household income.⁹⁶ Unfortunately, the poorest classes in Indian society are the Dalits, Adivasi, and Muslims, due to the discrimination prevalent in Indian social, with Dalit children being most affected.⁹⁷ Likewise,

⁹² Ankur Chhabra, 3 Economic Factors that Force 1 in Every 11 Indian Children to Work, <https://www.youthkiawaaz.com/2016/11/economics-of-child-labour-in-india/#>, (accessed May 21, 2020).

⁹³ International Labour Organization, Causes, https://www.ilo.org/moscow/areas-of-work/child-labour/WCMS_248984/lang-en/index.htm, (accessed May 21, 2020).

⁹⁴ SOS Children's Villages, POVERTY IN INDIA: FACTS AND FIGURES ON THE DAILY STRUGGLE FOR SURVIVAL, <https://www.soschildrensvillages.ca/news/poverty-in-india-602>, (accessed May 21, 2020).

⁹⁵ Ankur Chhabra, 3 Economic Factors that Force 1 in Every 11 Indian Children to Work, <https://www.youthkiawaaz.com/2016/11/economics-of-child-labour-in-india/#>, (accessed May 21, 2020).

⁹⁶ Ibid.

⁹⁷ Rikke Nohrlind and Gerard Oonk, Diluting India's child labour law will trap families in cycle of poverty, <https://www.theguardian.com/global-development/2015/may/18/india-child-labour-law-families-poverty>, (accessed May 21, 2020).

many people living in the provinces of Thailand face financial hardship. For instance, Mae Hong Son, Pattani, Kalasin, Narathiwat, and Tak⁹⁸ exhibited the highest poverty rates in Thailand during 2018, according to the World Bank.⁹⁹

The poverty rate in Thailand was over 65% in 1988, reducing to under 10% in 2018, according to the World Bank.¹⁰⁰ However, the poverty rate increased from 7.2 to 9.8% between 2015 and 2018 due to the economic slowdown. Besides, more than 6.7 million Thai people became poor, increasing from 4.85 million, according to the Bangkok Post.¹⁰¹ Thus, the statistics show that despite this decrease in Thailand's poverty rate, it increased again slightly in 2018 due to the economic slowdown. This means that poverty will not be eradicated from Thailand any time soon because many poor people live in rural and urban areas in Central and Northeast Thailand, while others are affected by the conflict in Southern Thailand, according to the Bangkok Post.¹⁰² Meanwhile, the National Wage Committee has agreed to raise the minimum daily wage for skilled and unskilled labor by about 5 to 6 baht due to the increased cost of living in many Thai provinces. Therefore, the minimum daily wage for skilled and unskilled labor is currently 315 to 320 baht, according to the Bangkok Post.¹⁰³ However, raising the minimum daily wage for skilled and unskilled labor cannot solve the poverty problem because many families living in the rural and urban areas of Thailand are still poor

⁹⁸ World Bank, Taking the Pulse of Poverty and Inequality in Thailand, <https://www.worldbank.org/en/country/thailand/publication/taking-the-pulse-of-poverty-and-inequality-in-thailand>, (accessed May 21, 2020).

⁹⁹ Ibid.

¹⁰⁰ World Bank, Thailand's Poverty on the Rise Amid Slowing Economic Growth, <https://www.worldbank.org/en/news/press-release/2020/03/03/thailands-poverty-on-the-rise-amid-slowing-economic-growth>, (accessed May 21, 2020).

¹⁰¹ Bangkok Post, Poverty on the Rise Again as Economy Slows, <https://www.bangkokpost.com/thailand/general/1872529/poverty-on-the-rise-again-as-economy-slows>, (accessed May 21, 2020).

¹⁰² Ibid.

¹⁰³ Bangkok Post, Minimum Wage to Rise Next Month, <https://www.bangkokpost.com/business/1810054/minimum-wage-to-rise-next-month>, (accessed May 21, 2020)

and some do not have any work. In addition, poverty results in lost education opportunities for some children because their families are poor. Thus, they are forced to work to increase the family income and take responsibility for their families.¹⁰⁴ Hence, poverty is a major economic factor because not only does it promote child labor and affect livelihoods, but also results in children being unable to access education, despite it being provided by the government.

3. Political

There is an element of distrust about the involvement of political factors in the child labor issue because the employment of children generally relates to social and economic aspects rather than political, since it affects people's livelihoods, income, employment, and social welfare, including education and health. However, political factors are related to the child labor issue, since it affects international business, both directly and indirectly¹⁰⁵ and no individual can live without the four basic requisites: food, housing, medicine, and clothing. Money is needed for all these things to provide quality of life. Therefore, the third political pillar consists of both internal and external factors. Political factors relate to the child labor issue since the government has a duty to provide social welfare: education, health care, and security to all citizens, and implement regulations to protect the fundamental rights of children and adults. However, the Thai government is currently failing to effectively protect the fundamental labor rights of the population. Likewise, Thailand's national labor standard does not meet international labor standards under the provisions of the ILO and the Minimum Age Convention, 1973 (No.138)¹⁰⁶ and the Worst Forms of Child Labour Convention,

¹⁰⁴ Franziska Humbert, The Challenge of Child Labour in International Law, 1st ed. (United States: Cambridge University Press), p.26.

¹⁰⁵ S.L. Bachman, The Political Economy of Child Labor and its Impacts on International Business, <https://willamette.edu/arts-sciences/additional-academic-opportunities/debate/pdf/youth-forum/kpdc-research/general/political-economy-of-child-labor.pdf>, (accessed May 21, 2020).

¹⁰⁶ International Labour Organization, C138 – Minimum Age Convention, 1973 (No.138), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100INSTRUMENT_ID:312283:NO, (accessed May 21, 2020).

1999 (No.182),¹⁰⁷ despite the Thai government ratifying both conventions.¹⁰⁸ It has also failed to revise national law to comply with the ratified international conventions. For these reasons, international sanctions have been imposed on Thailand by the International Civil Aviation Organization (ICAO), the United States, and European Union for failing to provide national labor standards to meet the international standard.

According to the Office of the United States Trade Representative (USTR), trade benefits for Thailand have been suspended by \$1.3 billion under the Generalized System of Preferences (GSP) due to the country's failure to provide internationally recognized labor rights.¹⁰⁹ Actually, the Thai government has a duty to provide internationally recognized labor rights to meet the standards according to the petition of the American Federation of Labor and Congress of Industrial Organization (AFL-CIO), involving six years of commitment, such as providing protection for freedom of association and collective bargaining.¹¹⁰ However, revocation of the Generalized System of Preferences (GSP) by the United States is effective for six months and at a cost of \$4.4 billion, affecting products imported from Thailand to the United States, including all seafood products, according to the Office of the United States Trade Representative

¹⁰⁷ International Labour Organization, C182 – Worst Forms of Child Labour Convention, 1999 (No.182), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182, (accessed May 21, 2020).

¹⁰⁸ International Labour Organization, Ratifications for Thailand, https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102843, (accessed May 21, 2020).

¹⁰⁹ Office of the United States Trade Representative, USTR Announces GSP Enforcement Actions and Successes for Seven Countries, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/october/ustr-announces-gsp-enforcement>, (accessed May 21, 2020).

¹¹⁰ Ibid.

(USTR).¹¹¹ Thailand has 573 products which can be repealed within six months,¹¹² for instance, sole, jack and horse mackerel, hake, Alaskan pollock, blue whiting, tilapia, catfish, sea bream, carp, sea bass, and crabmeat, according to the USTR.¹¹³

Meanwhile, international organizations concerned about the violation of labor rights in Thailand's seafood industry have been lobbying the Thai government to take steps to address the issue.¹¹⁴ Many Thai exporters are suffering as a result of the Generalized System Preferences (GSP) program because Thailand was the second biggest beneficiary in the import sector after India during 2017.¹¹⁵ According to the newspaper Prachatai, many of those working in the seafood sector protested to the Thai government that it should respect the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87).¹¹⁶ The major problem in Thailand is that the

¹¹¹ Office of the United States Trade Representative, USTR Announces GSP Enforcement Actions and Successes for Seven Countries, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/october/ustr-announces-gsp-enforcement>, (accessed May 21, 2020).

¹¹² Human Rights Watch, Statement on the U.S. Government Decision to Suspend Thailand's Trade Preferences Due to Worker Rights Issues, <https://www.hrw.org/news/2019/12/10/statement-us-government-decision-suspend-thailands-trade-preferences-due-worker>, (accessed May 21, 2020).

¹¹³ Seafood Source, US open to talk with Thailand over GSP cuts, <https://www.seafoodsource.com/news/supply-trade/us-open-to-talk-with-thailand-over-gsp-cuts>, (accessed May 21, 2020).

¹¹⁴ Human Rights Watch, Statement on the U.S. Government Decision to Suspend Thailand's Trade Preferences Due to Worker Rights Issues, <https://www.hrw.org/news/2019/12/10/statement-us-government-decision-suspend-thailands-trade-preferences-due-worker>, (accessed May 21, 2020).

¹¹⁵ Thai PBS World, Thai exports will suffer from GSP cut decision by US President Trump, <https://www.thaipbsworld.com/thai-exports-will-suffer-from-gsp-cut-decision-by-us-president-trump/>, (accessed May 21, 2020).

¹¹⁶ Prachatai, Seafood Working Group Urges Thai Govt to Address Labour Abuses in Wake of U.S. GSP Program Suspension, <https://prachatai.com/english/node/8301>, (accessed May 21, 2020).

government is not concerned about the fundamental rights of domestic workers and migrant labor.¹¹⁷ Furthermore, the labor standard in Thailand does not meet that provided by the ILO since Thai labor law lacks enforcement, creating a gap for rights to be easily violated by employers while also preventing the establishment of migrant labor associations in Thailand,¹¹⁸ according to Phil Robertson, Deputy Director of Human Rights Watch, Asia.

Additionally, while President of the United States, Donald Trump announced at Austin Straubel International Airport in Green Bay, Wisconsin, suspension of the Generalized System of Preferences worth \$1.3 billion in imports from Thailand with the privilege of \$4.4 billion in exports to the United States due to the lack of opportunity to open United States pork products to the Thai market, according to Reuters.¹¹⁹ Some of the products on the list of imports from Thailand include auto parts, electrical goods, dried goods, tools, aluminum, and kitchenware, according to the USTR.¹²⁰ According to Trump's letter to Speaker of the House Nancy Pelosi, Thailand was suspended from the Generalized System of Preferences (GSP) due to its weak protection of labor rights.¹²¹

Another measure aimed at pressurizing the Thai government to protect the rights of the labor force is the imposition of aviation sanctions by the ICAO, placing a red flag on Thai Airways due to Significant Safety Concerns (SSC)¹²² meaning that the

¹¹⁷ Prachatai, Seafood Working Group Urges Thai Govt to Address Labor Abuses in Wake of U.S. GSP Program Suspension, <https://prachatai.com/english/node/8301>, (accessed May 21, 2020).

¹¹⁸ Ibid.

¹¹⁹ Reuters, Trump suspends duty-free access for \$817 million in Thai imports, <https://www.reuters.com/article/usa-trade-thailand/trump-suspends-duty-free-access-for-817-million-in-thai-imports-idUSKBN27G031>, (accessed October 30, 2020).

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Flight Safety Foundation, ICAO Lifts Thailand's Safety "Red Flag", <https://flightsafety.org/thailand-red-flag/>, (accessed May 21, 2020).

airline could not add further international routes.¹²³ Moreover, Thai Airways was downgraded to Category II status by the United States Federal Aviation Administration (FAA) in June 2015 and it also limited the operation of routes to airports in the United States from Suvarnabhumi airport.¹²⁴ This included the suspension of long-haul Thai Airways flights operating routes from Bangkok to Los Angeles in October 2015.¹²⁵ Likewise, the European Aviation Safety Agency (EASA) confirmed that Thai Airways had addressed the SSC in meeting the European standard. This was a positive result, raising the confidence of other countries.¹²⁶ The ICAO finally removed the red flag for Thai Airways from their website without comment following a meeting on October 6, 2017, according to the Thai Aviation Authority. In addition, a red flag does not only apply to Thai Airways but includes any airlines who are Thai carriers, for instance, Thai AirAsia X, Nok Air, Nook Scoot, etc.¹²⁷ Several newer low-cost airlines in Thailand like Thai AirAsia X and Nook Scoot had their plans to operate long-haul flights curtailed due to the red flag imposed by the ICAO.¹²⁸

¹²³ Nikkei, Red flag lifted from Thai aviation safety, <https://asia.nikkei.com/Business/Red-flag-lifted-from-Thai-aviation-safety>, (accessed May 21, 2020).

¹²⁴ Flight Safety Foundation, ICAO Lifts Thailand's Safety "Red Flag." <https://flightsafety.org/thailand-red-flag/>, (accessed May 21, 2020).

¹²⁵ Greg Waldron, ICAO drops red flag for Thailand, <https://www.flightglobal.com/icao-drops-red-flag-for-thailand/125671.article>, (accessed May 21, 2020).

¹²⁶ Narisra Limtanakol, "RED FLAG" AUDIT HELPS THAILAND TO ACHIEVE A NEW LEVEL IN AVIATION SAFETY, [https://to70.com/red-flag-audit-helps-thailand-to-achieve - a-new-level-in-aviation-safety/](https://to70.com/red-flag-audit-helps-thailand-to-achieve-a-new-level-in-aviation-safety/), (accessed May 21, 2020).

¹²⁷ Sebastian Powell, ICAO Removes Thailand's Red Flag Rating After Passing New Aviation Safety Inspections, <https://loyaltylobby.com/2017/10/12/icao-removes-thailands-red-flag-rating-after-passing-new-aviation-safety-inspections/>, (accessed May 21, 2020).

¹²⁸ Greg Waldron, ICAO drops red flag for Thailand, <https://www.flightglobal.com/icao-drops-red-flag-for-thailand/125671.article>, (accessed May 21, 2020).

Moreover, the Thai government has been coming under pressure from the European Union due to illegal fishing,¹²⁹ slavery, forced labor, and human trafficking in the Thai seafood industry.¹³⁰ Seafood products from Thailand have been restricted by the European Union, with Thailand shown a yellow card to resolve Thai seafood problems, such as illegal fishing, forced labor, human trafficking, and slavery, according to the Organized Crime and Corruption Reporting Project (OCCRP).¹³¹ The United States Congress also expressed concern about labor issues in Thailand, involving slavery in the Thai seafood industry.¹³² The Associated Press (AP) has also reported on the concerns of the European Union and the United States about labor problems in Thailand's seafood industry regarding forced labor and slavery.¹³³ Indeed, according to the OCCRP, many victims of forced labor in Benjina, Indonesia work without pay or receive low pay and Thai boats have been fishing there, providing illegal rewards to government authorities.¹³⁴ Meanwhile, one former member of the Thai parliament informed the AP that Thai boats are able to access Indonesia's waters for fishing purposes by giving illegal rewards to Indonesian officials.¹³⁵ Hence, the United States imposed restrictions on seafood products from Thailand due to forced labor under the Tariff Act of 1930.¹³⁶ Moreover, Thailand is considered to be a major human trafficking hub.¹³⁷

¹²⁹ Wilawan Watcharasakwet and Nontarat Phaicharoen, EU Lifts Warning on Thai Seafood Industry, <https://www.benarnews.org/english/news/thai/Thai-seafood-industry-01082019175226.html>, (accessed May 21, 2020).

¹³⁰ Organized Crime and Corruption Reporting Project, Thailand: EU Threatens Trade Ban over Slavery in Fisheries, <https://www.occrp.org/en/daily/3888-thailand-eu-threatens-trade-ban-over-slavery-in-fisheries>, (accessed May 21, 2020).

¹³¹ Organized Crime and Corruption Reporting Project, Thailand: EU Threatens Trade Ban over Slavery in Fisheries, <https://www.occrp.org/en/daily/3888-thailand-eu-threatens-trade-ban-over-slavery-in-fisheries>, (accessed May 21, 2020).

¹³² Ibid.

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Ibid.

4. National Security

The fourth pillar influencing child labor is national security. National security is defined as the duty of the state to protect and defend its citizens.¹³⁸ Thus, national security in this context means that the Thai government has a duty to provide protection and defend children against child labor under the relevant employment regulations. The government also has a duty to treat all citizens equally, whether they are children or adults. National security relates to the stability of the country, rather than directly to the child labor issue since the employment of children is an internal matter. Indeed, child labor is connected to social and economic factors rather than politics and national security.

2.3.2 Effects

Following evaluation of the four factors relating to the child labor issues, namely social, economic, political, and national security, two stand out as being the most influential: social and economic. Accordingly, this section considers the effect of these factors on child labor and how the national regulations, known as the Labour Protection Act, B.E. 2541, can be improved to address the issue from the perspective of both the public and private sectors.

1. Public Sector

The government provides all children who are Thai citizens with the right to education under Section 50(4)¹³⁹ and Section 54 paragraph 1¹⁴⁰ enabling them to enroll in compulsory education without charge from pre-school to completion, covering a period of 12 years. Under these sections, the government ensures that all Thai children will receive a quality education. However, many poor children living in rural and urban areas cannot access education because the government does not provide

¹³⁸ Segun Osisanya, *National Security versus Global Security*, <https://www.un.org/en/chronicle/article/national-security-versus-global-security>, (accessed May 21, 2020).

¹³⁹ Constitution Drafting Commission, *Constitution of the Kingdom of Thailand*, at https://cdc.parliament.go.th/draftconstitution2/ewt_dl_link.php?nid=1460&filename=index, (accessed May 21, 2020).

¹⁴⁰ Ibid.,

financial support for uniforms, stationery, and books. Therefore, these children are forced to work by their parents to help the family survive, instead of going to school.¹⁴¹ Furthermore, the education system is considered to be of low quality and some parents are unable to afford the enrollment fees because they are too expensive¹⁴² and additional expenses are involved for books, uniforms, shoes, stationery, and cost of living. In fact, the government should provide the necessary support to enable all children to be educated, to encourage parents to send their children to school. Unfortunately, corruption in the Thai education system by officers or directors of educational institutions is a major contributory factor in the cause of child labor because many poor families, especially if they are large, cannot support their children to enroll in the compulsory education system due to the financial situation. Admission into high school depends on the willingness of parents and their ability to pay at the present time, according to Bangkok Post. Thus, the Thai educational system creates a vicious cycle for children in poor families¹⁴³ because if they cannot enroll in high school, parents send them to work instead.

Furthermore, many people living in the rural and urban areas of Thailand cannot access the health care provided by the government because they are on low incomes and do not have the ability to contribute toward the cost of health care. Likewise, more than a million tourists visit Thailand for health care purposes due to the quality of its excellent healthcare system, specialist doctors, and professional service.¹⁴⁴ According to the Bangkok Post, Thailand was placed sixth for the quality of its health

¹⁴¹ Franziska Humbert, The Challenge of Child Labour in International Law, 1st ed. (United States: Cambridge University Press), p.26.

¹⁴² Ibid., p.32.

¹⁴³ Bangkok Post, Stop Classroom Corruption, <https://www.bangkokpost.com/opinion/postbag/757436/stop-classroom-corruption>, (accessed May 21, 2020).

¹⁴⁴ Amazing Properties Bangkok, Health System in Thailand, <http://immigration-bangkok.com/health-system-thailand/>, (accessed May 21, 2020).

care in 2019.¹⁴⁵ However, some child employees working overtime, undertaking hazardous work, and those involved in commercial sexual activities, are subject to health problems, harming their growth and development, as well as physical and mental health. Unfortunately, some children are sold by their families to repay debts or brought to work in textile factories, according to Humanium.¹⁴⁶ Thus, the government should ensure that the healthcare system supports the victims of child labor.

2. Private Sector

Although the child labor issue has an impact on the public sector, it is also likely to affect the private sector through the economic and social aspects rather than politics and national security. Child labor is subject to the regulations of the Labour Protection Act, B.E. 2541 which is designed to protect children against exploitation and the violation of their fundamental rights such as being forced to work, participate in commercial sexual activities, working overtime, and low pay. Unfortunately, the Act is difficult to enforce because some of the officers involved accept bribes from the employers, meaning that the rights of these child victims remain unprotected. Moreover, according to Nawarat Phlainoi, the wages of child employees tend to be lower than the law requires.¹⁴⁷ Indeed, the Labour Protection Act, B.E. 2541 does not legislate for child employees to be paid a minimum wage. This indicates a lack of concern by the government toward the rights of child employees. Furthermore, poverty is the main cause of child labor in Thailand because people living in Thai provinces such as Mae Hong Son, Pattani, Kalasin, Narathiwat, and Tak tend to be the poorest, according to the World

¹⁴⁵ Post Reporter, Thailand's healthcare ranked sixth best in the world, <https://www.bangkokpost.com/thailand/general/1746289/thailands-healthcare-ranked-sixth-best-in-the-world>, (accessed May 21, 2020).

¹⁴⁶ Humanium, Child Labour, <https://www.humanium.org/en/child-labour/>, (accessed May 21, 2020).

¹⁴⁷ Nawarat Phlainoi, Investigating the Worst Forms of Child Labour No.23 Thailand Child Domestic Workers: A Rapid Assessment, p.15.

Bank.¹⁴⁸ This means that children from poor families have to take on the responsibility of helping their parents by working to increase the family income but this results in inequality, widening the gap between the rich and the poor in Thailand.

According to the World Bank, poverty is widespread in Thailand with 61 of the 77 provinces being impoverished in 2018 due to the continuous decrease in household income in rural and urban areas during 2019 when the GDP of the country was at its lowest rate of about 2.7%. This is lower than countries with large economies in the developing Pacific and East Asia areas, with Thailand's farmers being the poorest.¹⁴⁹

Finally, poverty limits access to education, pushing poor children toward work rather than school because many parents cannot afford the extra expenses involved in education such as the purchase of books, stationery, uniforms, and shoes. However, under Section 50(4)¹⁵⁰ and Section 54 paragraph 1¹⁵¹ of the Constitution of the Kingdom of Thailand, B.E. 2560, all children who are Thai citizens have the right to compulsory education without charge from pre-school to completion for 12 years. Unfortunately, many Thai people are illiterate because they cannot access education due to their financial situation.

2.4 Legal Concepts of Child Labor Regulations

The regulations should provide definitions for the terms “child” and “child labor” to determine the actions necessary for their enforcement. Child labor refers to the employment of a minor and is subject to violation, exploitation, slavery, child trafficking, drug trafficking, forced labor, compulsory labor, debt bondage, and sexual perfor-

¹⁴⁸ World Bank, Taking the Pulse of Poverty and Inequality in Thailand, <https://www.worldbank.org/en/country/thailand/publication/taking-the-pulse-of-poverty-and-inequality-in-thailand>, (accessed May 21, 2020).

¹⁴⁹ Ibid.

¹⁵⁰ Constitution Drafting Commission, Constitution of the Kingdom of Thailand, https://cdc.parliament.go.th/draftconstitution2/ewt_dl_link.php?nid=1460&filename=index, (accessed May 21, 2020).

¹⁵¹ Ibid.

mances, prostitution, and pornography, according to Black's Law Dictionary, 11th Edition.¹⁵² The term "child" is defined by Black's Law Dictionary, 11th Edition as an individual under the age of 14 years or under the age of majority.¹⁵³ Thus, definitions for the terms "child" and "child labor" can be divided into two categories: developed countries and developing countries.

2.4.1 Developed Countries

As a developed country, the United States regulates child labor under the Fair Labor Standards Act, 1938. The Act does not provide definitions of the terms "child" and "child labor" but uses the term "oppressive child labor" rather than "child labor" as the employment of children aged between 16 and 18 years under 29 U.S. Code § 203(1)¹⁵⁴. On the other hand, the term "child labor" can be interpreted as any work performed by teenagers,¹⁵⁵ while "child" is defined as any person under the age of 13 years according to §6501 (1) of the United States Code.¹⁵⁶ However, the Congress Record Volume 143, Issue 125 (September 18, 1997), page S9631¹⁵⁷ defines the term "child labor" as an international standard rather than an American. Thus, the definition of the

¹⁵² Bryan A. Garner, Black's Law Dictionary, 11th ed. (United States: Thomson Reuters), p.302.

¹⁵³ Ibid., p.299.

¹⁵⁴ Office of the Law Revision Counsel, United States Code, 29 USC Ch. 8 FAIR LABOR STANDARDS, <https://uscode.house.gov/view.xhtml?path=/prelim@title29/chapter8&edition=prelim>, (accessed May 21, 2020).

¹⁵⁵ Shodhganga, CHAPTER-VII CHILD LABOUR IN UNITES STATES OF AMERICA, UK, RUSSIA, CHINA, SOUTH AFRICA, SOUTH ASIA, AND OTHER COUNTRIES: A COMPARATIVE ANALYSIS, https://shodhganga.inflibnet.ac.in/bitstream/10603/95694/15/15_chapter%207.pdf, (accessed May 21, 2020).

¹⁵⁶ United States Government Information, §6501 TITLE 15 - COMMERCE AND TRADE, <https://www.govinfo.gov/content/pkg/USCODE-2011-title15/pdf/USCODE-2011-title15-chap91-sec6501.pdf>, (accessed May 21, 2020).

¹⁵⁷ United States Government Information, CONGRESSIONAL RECORD – SENATE, <https://www.govinfo.gov/content/pkg/CREC-1997-09-18/pdf/CREC-1997-09-18-pt1-PgS9631-2.pdf>, (accessed May 21, 2020).

term “child labor” is based on the Minimum Age Convention, 1973 (No.138)¹⁵⁸ rather than the Fair Labor Standards Act, 1938.

2.4.2 Developing Countries

Thailand and India are developing countries, both of which have almost full employment, and use child labor. Likewise, each has labor issues, involving the protection of fundamental rights, wages, working hours, overtime, holiday pay, and social welfare. Obviously, the regulations on child labor are legislated by the respective governments. In Thailand, the labor regulations are known as the Labour Protection Act, B.E. 2541. The Act also controls the employment of children because Thailand does not have separate legislature for child labor. Indeed, the Labour Protection Act, B.E. 2541 does not provide meanings for the terms “child” and “child labor”. However, the Child Protection Act, B.E. 2546 defines the term “child” as an individual under the age of 18 years but excludes *sui juris* due to marriage under Section 4 paragraph 1.¹⁵⁹ Additionally, the Labour Protection Act, 2541 was amended in 2017 with the aim of reducing child trafficking by increasing the penalties.¹⁶⁰ However, it does not provide definitions for the terms “child” and “child labor”.

There are numerous regulations in India for protecting the fundamental rights of the labor force. However, the regulations on child labor in India are legislated separately and known as the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986. Actually, this Act does not provide a meaning for the term “child labor” but defines, the term “child” as any person under the age of 14 years under Article 2(ii).¹⁶¹

¹⁵⁸ Ibid.

¹⁵⁹ Office of the Council of State, The Child Protection Act, B.E. 2546, http://web.krisdika.go.th/data/outsitedata/outside21/file/CHILD_PROTECTION_ACT_B.E._2546.pdf, (accessed May 21, 2020).

¹⁶⁰ Suriyoung Tungsuwan, Amendments to the Thai Labour Protection Act Regarding Child Labour Violations, <https://globalcompliancenews.com/thai-labour-protection-act-child-labour-violations-20170209/>, (accessed May 21, 2020).

¹⁶¹ India Code, The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, https://www.indiacode.nic.in/bitstream/123456789/1848/5/a1986__61.pdf, (accessed May 21, 2020).

2.5 Conclusion

In summary, the child labor issue is mainly influenced by social and economic factors such as poverty, education, living standards, age, and gender rather than culture, beliefs, and parental attitude. However, in Thailand, poverty and education are contributory factors in child labor because many families living in the rural areas of many provinces are poor and their children cannot access education due to the expenses involved. In contrast, the child labor issue in India is affected by gender, beliefs, and culture, especially belief in the caste system which has been part of Indian society since ancient times. Discrimination is also prevalent in society in India because many people, especially children, are classed as untouchables or Dalits, and do not have access to fundamental rights and welfare under the Constitution of India, 1950. As a result, Thailand and India are developing countries which for different reasons experience child labor issues. While the child employment in Thailand is a consequence of poverty and lack of education and the regulation to protect the fundamental rights of the child labour. India's child labor problem is caused by culture and beliefs, specifically in relation to the caste system, practically, the child labour regulation of India cannot protect the child labour. Meanwhile, child labor affects the public and private sectors in Thailand because many children cannot access education due to poverty, resulting in social issues such as prostitution, crime, murder, theft, begging, and rape. Unfortunately, Thailand's Labour Protection Act, B.E. 2541 does not define the terms "child" and "child labor", which means that the legislation is open to wide interpretation, with no separate regulations to protect child employees.

Chapter 3

Child Labor Regulations under International and National Law

The violation of labor rights, especially those involving children, is widespread globally and occurs in both developing and developed countries. In developing countries such as Thailand, India, Myanmar, and Bangladesh, the extent of child labor means it is extremely difficult to protect children from exploitation. The employment of children has been continuously increasing over time. Child labor violates both national and international law which prohibited children from working. Child labor is regulated under the international conventions of the ILO, and it is important that the national standards of both developed and developing countries meet the international standards to protect the growth and development of child employees, including their physical and mental health, and morality.

Furthermore, Thailand, India, and the United States are member countries of the ILO¹⁶² and the governments of these countries have ratified their conventions on child labor.¹⁶³ Thus, under such ratification, these governments have a duty to ensure their national labor standards comply with international standards. During the industrial revolution, the United States faced a child labor problem, whereby children were violated and exploited by employers.¹⁶⁴ To address the issue, the United States government established the Fair Labor Standard Act, 1938 to provide and protect the fundamental

¹⁶² International Labour Organization, Member States, <https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/member-states/lang--en/index.htm>, (accessed May 21, 2020).

¹⁶³ International Labour Organization, Ratification by country, <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11001:0::NO::>, (accessed May 21, 2020).

¹⁶⁴ Shodhganga, CHAPTER – VII CHILD LABOUR IN UNITES STATES OF AMERICA, UK, RUSSIA, CHINA, SOUTH AFRICA, SOUTH ASIA, AND OTHER COUNTRIES: A COMPARATIVE ANALYSIS, https://shodhganga.inflibnet.ac.in/bitstream/10603/95694/15/15_chapter%207.pdf, (accessed May 21, 2020).

rights of children in the United States.¹⁶⁵ Then in 1992, the ILO established the International Programme on the Elimination of Child Labour (IPEC)¹⁶⁶ which Thailand joined the same year.¹⁶⁷ The elimination of child labor is challenging for the Thai government and not easy to implement in a developing country since many sectors employ children due to the business benefits, economic growth, maintaining the GDP, and cheap labor. However, child labor is illegal because it violates and exploits the fundamental rights of the child employees under the United Nations Convention on the Rights of the Child, 2013 (CRC)¹⁶⁸, the Minimum Age Convention, 1973 (No.138),¹⁶⁹ and the Worst Forms of Child Labour Convention, 1999 (No.182).¹⁷⁰

Despite the difficulties involved in eliminating child labor, Thailand can reduce the number of children permitted to carry out light and non-hazardous work. However, there are many influencing factors in the employment of children, such as poverty, illiteracy, and quality of life. Therefore, the Labour Protection Act, B.E. 2541, particularly Chapter 4, should be revised to permit children to perform light or non-hazardous to avoid exploitation. In addition, the Act should provide definitions for the terms “child”

¹⁶⁵ OSHA Education Center, Child Labor Laws – Facts and Misconceptions, <https://www.oshaeducationcenter.com/articles/child-labor-laws/?fbclid=IwAR2XrDydL2BW9o1MfG1GGUaLmJb2NJ2IA1jEpq8I3gNkXwn3wyHVXnnNdYY>, (accessed May 21, 2020).

¹⁶⁶ International Labour Organization, About the international Programme on the Elimination of Child Labour (IPEC), <https://www.ilo.org/ipecc/programme/lang--en/index.htm>, (accessed May 21, 2020).

¹⁶⁷ International Labour Organization, Thailand Making ILO’s World day against Child Labour, https://www.ilo.org/asia/media-centre/news/WCMS_BK_PR_41_EN/lang--en/index.htm, (accessed May 21, 2020).

¹⁶⁸ UNICIF, Convention on the Rights of the Child 2013, https://www.unicef.org/csr/css/CRC-C-GC-16_en.pdf, (accessed May 21, 2020).

¹⁶⁹ International Labour Organization, C138 - Minimum Age Convention, 1973 (No.138), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12_100_ILO_CODE:C138, (accessed May 21, 2020).

¹⁷⁰ International Labour Organization, C182 – Worst Forms of Child Labour Convention, 1999 (No.182), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:121_00:0::NO::P12100_ILO_CODE:C182, (accessed May 21, 2020).

and “child labor” to protect the child employees. Hence, this chapter focuses on the relevant international regulations: the Minimum Age Convention, 1973 (No.138), the Worst Forms of Child Labour Convention, 1999 (No.182), and the United Nations Convention on the Rights of the Child (CRC), as well as the national regulations of the United States, Thailand, and India.

3.1 International Regulations

Established in 1919, the ILO is a functional agency of the UN, and responsible for providing international labor standards, development policies, and the creation of regulations to improve labor conditions and living standards internationally.¹⁷¹ Indeed, the ILO was established under the Treaty of Versailles in 1919 as specialized subsidiary of the League of Nations,¹⁷² with the aim of providing employees, employers, and governments with an equal voice to closely meet international labor standards.¹⁷³ Since its establishment, 187 countries have become members of the ILO,¹⁷⁴ including India, Thailand, and the United States.¹⁷⁵ The Minimum Age Convention, 1973 (No.138) and the Worst Forms of Child Labour Convention, 1999 (No.182) have been adopted by the ILO.¹⁷⁶ Likewise, the United Nations Convention on the Rights of the Child (UNCRC)¹⁷⁷

¹⁷¹ Karen Mingst, International Labour Organization, <https://www.britannica.com/biography/Leon-Jouhaux>, (accessed May 21, 2020).

¹⁷² Ibid.

¹⁷³ International Labour Organization, About the ILO, <https://www.ilo.org/global/about-the-ilo/lang--en/index.htm>, (accessed May 21, 2020).

¹⁷⁴ Ibid.

¹⁷⁵ International Labour Organization, Member states, <https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/member-states/lang--en/index.htm>, (accessed May 21, 2020).

¹⁷⁶ International Labour Organization, ILO Conventions on child labour, <https://www.ilo.org/ipec/facts/ILOconventionsonchildlabour/lang--en/index.htm>, (accessed May 21, 2020).

¹⁷⁷ UNICEF, What is the Convention on the Rights of the Child? at <https://www.unicef.org/child-rights-convention/what-is-the-convention>, (accessed May 21, 2020).

has been adopted by many countries as an international standard to protect the fundamental rights of children. Hence, the fundamental rights and employment of children are protected and regulated under the ILO and these three conventions.

3.1.1 The Minimum Age Convention, 1973 (No.138)

The Minimum Age Convention, 1973 (No.138) was adopted by the ILO as an international standard to regulate the employment of children, and eliminate child labor.¹⁷⁸ Many industries employ children and exploit their rights in violation of the regulations.¹⁷⁹ The employment of children harms their growth and development, from the physical, mental, safety, and moral perspective.¹⁸⁰ Moreover, it reduces the opportunity for children to access compulsory education. The Minimum Age Convention, 1973 (No.138) aims to establish international labor standards, such as a minimum age for child employees¹⁸¹ and national policies to eliminate child labor.¹⁸²

Article 1 of the Convention provides that member states who are party to the Convention have a duty to implement a national policy on the employment of children to comply with the international standard of the ILO. The Convention also provides for minimum child employment as the international standard. The minimum age children can be employed under Article 2, paragraphs 1, 3–4¹⁸³ of the Convention should not be less than 15 years or after completion of compulsory education. In the case of adverse economic conditions and lack of education facilities in some developing countries, the minimum age of the child employee should be no younger than 14 years. On the other hand, for any employment which may hinder the growth and development of children, affecting their health, safety, or morality, including hazardous work,

¹⁷⁸ International Labour Organization, ILO Convention No.138 at a glance, p.1.

¹⁷⁹ Ibid., p.1.

¹⁸⁰ Ibid., p.1.

¹⁸¹ Ibid., p.1.

¹⁸² Ibid., p.1.

¹⁸³ International Labour Organization, C138 - Minimum Age Convention, 1973 (No.138), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12_100_ILO_CODE:C138, (accessed May 21, 2020).

child employees should be no younger than 18 years under Article 3 paragraph 1.¹⁸⁴ Furthermore, the member has a duty to regulate its national law to determine the type of employment children can undertake under Article 3 paragraph 2.¹⁸⁵ The Convention does not apply to any work at the school of the child employee or young person employee, such as general working, vocational, technical education or other training institutions,¹⁸⁶ or any work carried out by the child employee aged 14 years or older under Article 6. Moreover, the government should provide authorization for the employment of children aged between 13–15 years under national law which should regulate the type of light work the child employee can undertake and includes those who are younger than 15 years or have not completed compulsory education under Article 7 paragraphs 1 and 2.¹⁸⁷

3.1.2 The Worst Forms of Child Labour Convention, 1999 (No.182)

The Worst Forms of Child Labour Convention, 1999 (No.182) was adopted by the ILO to regulate the employment of all person under the age of 18 years under Article 2.¹⁸⁸ The Convention also prohibits any work stated under paragraphs (a) to (d) of Article 3, as follows:¹⁸⁹

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring, or offering of a child for prostitution, for the production of pornography or for pornographic performances;

¹⁸⁴ International Labour Organization, C138 – Minimum Age Convention, 1973 (No.138), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138, (accessed May 21, 2020).

¹⁸⁵ Ibid.,

¹⁸⁶ Ibid.,

¹⁸⁷ Ibid.,

¹⁸⁸ International Labour Organization, C182 – Worst Forms of Child Labour Convention, 1999 (No.182), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182, (accessed May 21, 2020).

¹⁸⁹ Ibid.

(c) the use, procuring, or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children.¹⁹⁰

Member states ratifying the Worst Forms of Child Labour Convention have a duty to implement immediate measures for their prohibition and elimination under Article 1.¹⁹¹

3.1.3 The United Nations Convention on the Rights of the Child (UNCRC)

The UNCRC aims to provide and protect the rights of children as the international standard. The Convention also applies to children's civil, political, economic, social, and cultural rights in relation to race, religion, or ability.¹⁹² The Convention is concerned with protecting the fundamental rights of children as well as their interests and dignity as minors and innocents. Actually, the first declaration on children's rights was written by Eglantyne Jebb, founder of Save the Children in 1923 and subsequently adopted by the UNCRC.¹⁹³ By ratifying the Convention, the government has a duty to comply with its regulations and protect the fundamental welfare of children under Article 24 paragraphs 1 and 2,¹⁹⁴ by providing health care, clean water, nourishment, food, a good, clean environment, and education. Moreover, children should have the right to social security and this should be provided under national law which is legislated by

¹⁹⁰ International Labour Organization, C182 – Worst Forms of Child Labour Convention, 1999 (No.182), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182, ((accessed May 21, 2020).

¹⁹¹ Ibid.

¹⁹² Eglantyne Jebb, Save the Children Founder, UN CONVENTION OF THE RIGHTS IF THE CHILD (UNCRC) An international agreement for child rights, <https://www.savethechildren.org.uk/what-we-do/childrens-rights/united-nations-convention-of-the-rights-of-the-child>, ((accessed May 21, 2020).

¹⁹³ Ibid.

¹⁹⁴ United Nations High Commissioner for Refugees, Convention of the Rights of the Child, <https://www.unhcr.org/protection/children/50f941fe9/united-nations-convention-rights-child-crc.html>, (accessed May 21, 2020).

the government under Article 26 paragraph 1¹⁹⁵ of the Convention. Moreover, providing adequate living standards for children in the areas of physical, mental, spiritual, moral, and social development should be the duty of the government, while parents are responsible for the areas of ability, financial capacity, and living conditions, all of which are essential for children's development under Article 27 paragraphs 1 and 2.¹⁹⁶

Children have the right to be educated under Article 28¹⁹⁷ of the Convention. The government has a duty to provide compulsory education without charge to all children and to ensure discipline in schools to respect the dignity of children and promote and encourage education for the purpose of eliminating ignorance and illiteracy. The government is also under a duty to provide facilities relating to education such as technical and scientific knowledge, and modern teaching methods. Moreover, the government is under an obligation to protect children from danger and harm to their health and physical wellbeing or education. Children should be protected against drugs, abduction, slavery, exploitation, and sexual violation; sexual activity, pornography, and sexual performances under Articles 32 - 35¹⁹⁸ of the Convention. Hence, the employment of children below the age of 18 years under the Convention is prohibited, although they can perform light work. The minimum age at which children can be employed should be provided by national law, including working hours and conditions of employment. Additionally, the government should ensure all children and their parents are aware of the Convention under Article 42.¹⁹⁹

3.2 National Regulations

Child labor is a long-standing issue and presents a challenge for both developed and developing countries due to the benefits to business and economic development. Unfortunately, child employees are subject to violation and exploitation, such as forced

¹⁹⁵ United Nations High Commissioner for Refugees, Convention of the Rights of the Child, <https://www.unhcr.org/protection/children/50f941fe9/united-nations-convention-rights-child-crc.html>, (accessed May 21, 2020).

¹⁹⁶ Ibid.

¹⁹⁷ Ibid.

¹⁹⁸ Ibid.

¹⁹⁹ Ibid.

labor, working without pay, low wages, overtime, performing hazardous work, and commercial sexual activities such as prostitution, pornography, and sexual performances. National regulations often fail to protect the rights of children and because they are enforced differently due to the lack of modernity and penalties. Sadly, national regulations are subject to abuse, with officers frequently taking bribes from employers to ignore illegal situations. Hence, three countries are mentioned in the child labor regulations: the United States (a developed country), and Thailand and India (developing countries).

3.2.1 Developed Countries

The United States is a developed country with a record of child labor. Historically, children in the United States became victims of violation and exploitation, and there was no legislation to protect their fundamental rights.²⁰⁰ During the industrial revolution, the United States faced a serious child labor issue throughout the country, and, especially in New York.²⁰¹ To address the problem, the United States labor law was legislated in 1938 and remains in force to this day. It is called the Fair Labor Standards Act, 1938 (FLSA), and its provisions protect the fundamental rights of the labor force, including regulations on child employment.

The Fair Labor Standards Act, 1938 (FLSA) includes provisions for minimum wages, overtime, holiday, sick leave, working hours, certification, and type of work.²⁰² However, since the Fair Labor Standards Act, 1938 is legislated under federal law, the labor standard is provided by the federal government and the child labor laws of each

²⁰⁰ Shodhganga, CHAPTER – VII CHILD LABOUR IN UNITES STATES OF AMERICA, UK, RUSSIA, CHINA, SOUTH AFRICA, SOUTH ASIA, AND OTHER COUNTRIES: A COMPARATIVE ANALYSIS, https://shodhganga.inflibnet.ac.in/bitstream/10603/95694/15/15_chapter%207.pdf, (accessed May 21, 2020).

²⁰¹ Michael Schuman, History of child labor in the United States – part 1: little children working, <https://www.bls.gov/opub/mlr/2017/article/history-of-child-labor-in-the-united-states-part-1.htm>, (accessed May 21, 2020).

²⁰² Wage and Hour Division of the United States Department of Labor, Handy Reference Guide to the Fair Labor Standards Act, <https://www.dol.gov/agencies/whd/compliance-assistance/handy-reference-guide-flsa>, (accessed May 21, 2020).

state are different because they depend on the laws of that particular state, such as the regulations involving age and employment certification.²⁰³

1. Definition

The Fair Labor Standards Act, 1938 does not provide a definition for the terms “child” and “child labor” although it does offer a meaning for the term “oppressive child labor” as the condition of employment for children aged between 16 and 18 years under 29 U.S. Code § 203(1)²⁰⁴ On the other hand, the term “child labor” is determined as any works performed by teenagers.²⁰⁵ The U.S. Code §6501(1)²⁰⁶ provides a meaning for the term “child” as an individual below the age of 13 years. However, the term “child labor” is not defined by the Congress Record Volume 143, Issue 125 (September 18, 1997), page S9631²⁰⁷ since it is an international standard rather than American. This means the definition for the term “child labor” is based on international law known as the Minimum Age Convention, 1973 (No.138)²⁰⁸ under the ILO.

²⁰³ Wage and Hour Division of the United States Department of Labor, Handy Reference Guide to the Fair Labor Standards Act, <https://www.dol.gov/agencies/whd/compliance-assistance/handy-reference-guide-flsa>, (accessed May 21, 2020).

²⁰⁴ Office of the Law Revision Counsel, United States Code, 29 USC Ch. 8 FAIR LABOR STANDARDS, <https://uscode.house.gov/view.xhtml?path=/prelim@title29/chapter8&edition=prelim>, (accessed May 21, 2020).

²⁰⁵ Shodhganga, CHAPTER – VII CHILD LABOUR IN UNITED STATES OF AMERICA, UK, RUSSIA, CHINA, SOUTH AFRICA, SOUTH ASIA, AND OTHER COUNTRIES: A COMPARATIVE ANALYSIS, https://shodhganga.inflibnet.ac.in/bitstream/10603/95694/15/15_chapter%207.pdf, (accessed May 21, 2020).

²⁰⁶ United States Government Information, §6501 TITLE 15 - COMMERCE AND TRADE, <https://www.govinfo.gov/content/pkg/USCODE-2011-title15/pdf/USCODE-2011-title15-chap91-sec6501.pdf>, (accessed May 21, 2020).

²⁰⁷ United States Government Information, CONGRESSIONAL RECORD -- SENATE, <https://www.govinfo.gov/content/pkg/CREC-1997-09-18/pdf/CREC-1997-09-18-pt1-PgS9631-2.pdf>, (accessed May 21, 2020).

²⁰⁸ Ibid.

2. Age

The Fair Labor Standards Act, 1938 is the child labor law of the United States. The provisions of this Act state the minimum age at which children can be employed and divides child labor into oppressive child labor, employment relationship, and commerce. Oppressive child labor refers to any employment of youths under the age of 16 years and includes the employment of youths in hazardous work who are under the age of 18 years.²⁰⁹ The employment relationship refers to child employees who are unpaid, volunteers, or producers.²¹⁰ The provisions for commerce under §203(b)²¹¹ of the Fair Labor Standards Act, 1938 include “*trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.*”²¹² However, children under the age of 16 years can be employed in any work and those under the age of 18 years are exempt from being employed in any hazardous work.²¹³ However, children are not exempt from employment in non-agricultural work if they are over the age of 18 years and can perform hazardous work as determined by the Secretary of Labor as long as such work does not harm the health and physical wellbeing of the child employee.²¹⁴ Children over the age of 16 years can be employed in any non-hazardous work,²¹⁵ and those over the age of

²⁰⁹ Sarah A. Donovan and Jon O. Shimabukuro, The Fair Labor Standards Act (FLSA) Child Labor Provisions, <https://fas.org/sqp/crs/misc/R44548.pdf>, (accessed May 21, 2020).

²¹⁰ Ibid.

²¹¹ Wage and Hour Division of the United States Department of Labor, The Fair Labor Standards Act of 1938, As Amended, <https://www.dol.gov/sites/dolgov/files/WHDLegacy/files/FairLaborStandAct.pdf>, (accessed May 21, 2020).

²¹² Ibid.

²¹³ Sarah A. Donovan and Jon O. Shimabukuro, The Fair Labor Standards Act (FLSA) Child Labor Provisions, <https://fas.org/sqp/crs/misc/R44548.pdf>, (accessed May 21, 2020).

²¹⁴ Ibid.

²¹⁵ Ibid.

14 years are limited to restricted working hours and conditions of employment as determined by the Secretary of Labor.²¹⁶ Meanwhile, there are some exemptions to the conditions of child employment under the Act in respect of the non-agricultural sector. Child employees over the age of 18 years can be employed in hazardous work as determined by the Secretary of Labor provided it is not harmful to the health and physical wellbeing of the child employee.²¹⁷ Children over the age of 16 years can be employed in any non-hazardous work,²¹⁸ and those over the age of 14 years are limited to restricted working hours and conditions of employment as determined by the Secretary of Labor.²¹⁹

Furthermore, some conditions under the Act provide for the employment of children in the agricultural sector. Children over the age of 16 years can be employed without any restriction on working hours in the agricultural sector.²²⁰ Likewise, under 29 U.S. Code §213(c)(1)(C)²²¹ children over the age of 14 years can be employed to perform non-hazardous work in the agricultural sector after school hours, and those aged between 12 and 13 years can be employed in non-hazardous work in the agricultural sector after school hours with the permission of a parent. However, parental permission is not required if the employers are parents of the child employee under the 29 U.S. Code §213(c)(1)(B).²²² Children between the ages of 10 and 11 years can be employed for hand-harvesting work for eight weeks and in any non-hazardous work after

²¹⁶ Sarah A. Donovan and Jon O. Shimabukuro, The Fair Labor Standards Act (FLSA) Child Labor Provisions, <https://fas.org/sgp/crs/misc/R44548.pdf>, (accessed May 21, 2020).

²¹⁷ Ibid.,

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ Ibid.

²²¹ Wage and Hour Division of the United States Department of Labor, The Fair Labor Standards Act of 1938, As Amended, <https://www.dol.gov/sites/dolgov/files/WHDLegacy/files/FairLaborStandAct.pdf>, (accessed May 21, 2020).

²²² Ibid.

school hours with parental permission.²²³ Children over the age of 12 years can be employed in any non-hazardous work after school at a small farm with parental permission.²²⁴ Moreover, the Act does not impose any restrictions if the employers are farm owners and the farms are operated by the parents of the child employee. This means children can be employed without any restrictions by the Act in the case where the employer is the child's parent and owner or operator of the farm.

In summary, under the regulations, minors over the age of 14 years can be employed in non-hazardous work. The regulations also limit the working hours of child employees, including any work which harms the health and safety of child employees. Likewise, minors under the age of 18 years are not permitted to perform hazardous work.

3. Types of Work

The Fair Labor Standards Act, 1938 does not contain any provisions for the type of work children can undertake. Likewise, any work involving the shipment of hot goods under 29 U.S. Code §215(a)(1)²²⁵ are prohibited as is any work performed by children which may damage their dignity under 29 U.S. Code §212(c).²²⁶ This means the Act does not contain any provisions for the type of work which is not damaging to the dignity of humans or hazardous work involving children.

4. Wage

The minimum wage is an essential part of employment for adults and should be regulated because it is an emolument. Indeed, the Fair Labor Standards Act, 1938 provides for a minimum wage for child employees. Under the provisions of 29 U.S.

²²³ Sarah A. Donovan and Jon O. Shimabukuro, The Fair Labor Standards Act (FLSA) Child Labor Provisions, <https://fas.org/sgp/crs/misc/R44548.pdf>, (accessed May 21, 2020).

²²⁴ Ibid.

²²⁵ Wage and Hour Division of the United States Department of Labor, The Fair Labor Standards Act of 1938, As Amended, <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FairLaborStandAct.pdf>, (accessed May 21, 2020).

²²⁶ Ibid.

Code §206 (a)(1)(A)(B)(C) the minimum wage²²⁷ is \$5.85 an hour, beginning on the 60th day after May 25, 2007,²²⁸ \$6.55 an hour, beginning 12 months after that 60th day,²²⁹ and \$7.25 an hour, beginning 24 months after that 60th day,²³⁰ respectively. Additionally, the minimum wage for youths should be no less than \$4.24 per hour for those under the age of 20 years for 90 consecutive days of employment²³¹ but the reduction of the employee's hours, wages, or benefits is prohibited.²³² In addition, the Act does not include basic welfare provisions for child employees, such as sick pay, severance pay, meals, rest periods, days off; holiday and vacation, and premium pay for working holidays or weekends,²³³ according to the Wage and Hour Division.

5. Working Hours

The Fair Labor Standards Act, 1938 under 29 U.S. Code §207(2)(A)(B)(C) includes the following provisions for working hours.²³⁴ *The employer cannot ask the employee to work more than 44 hours per week according to the effective data of the*

²²⁷ Office of the Law Revision Counsel, United States Code, 29 USC Ch. 8 FAIR LABOR STANDARDS, <https://uscode.house.gov/view.xhtml?path=/prelim@title29/chapter8&edition=prelim>, (accessed May 21, 2020).

²²⁸ Ibid.

²²⁹ Ibid.

²³⁰ Ibid.

²³¹ Wage and Hour Division of the United States Department of Labor, The Fair Labor Standards Act of 1938, As Amended, <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FairLaborStandAct.pdf>, (accessed May 21, 2020).

²³² Ibid.

²³³ Wage and Hour Division of the United States Department of Labor, Handy Reference Guide to the Fair Labor Standards Act, <https://www.dol.gov/agencies/whd/compliance-assistance/handy-reference-guide-flsa#1>, (accessed May 21, 2020).

²³⁴ Office of the Law Revision Counsel, United States Code, 29 USC Ch. 8 FAIR LABOR STANDARDS, <https://uscode.house.gov/view.xhtml?path=/prelim@title29/chapter8&edition=prelim>, (accessed May 21, 2020).

Fair Labor Standards Amendments of 1966,²³⁵ for a workweek longer than forty-two hours during the second year from such date,²³⁶ or for a workweek longer than forty hours after the expiration of the second year from such date.²³⁷

6. Welfare

The Fair Labor Standards Act, 1938 is known as the child labor regulations and is one of many federal laws relating to the minimum standard of child employment labor in the United States. Some conditions for the employment of children are provided by state law rather than federal law. Thus, some welfare elements, such as holiday pay, vacations, paid leave, or sick pay, are not required to be provided for under the Act,²³⁸ according to the Wage and Hour Division.

3.2.2 Developing Countries

The child labor issue is not a new challenge for developing countries like Thailand and India but many children in both countries are victims of violation and exploitation with no one to help and protect them. As a result, governments should provide legislation for the conditions of employment and fundamental rights of child employees. However, both the Thai and Indian governments are concerned about the child labor issue and have regulations in place to protect children. The Thai regulations on child labor are known as the Labour Protection Act, B.E. 2541 Chapter 4 because Thailand does not have separate provisions to regulate child labor.

In India, the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 contains provisions to protect children and youths. Additionally, the Constitution of India, 1950 prohibits the employment of children under the age of 14 years in any

²³⁵ Office of the Law Revision Counsel, United States Code, 29 USC Ch. 8 FAIR LABOR STANDARDS, <https://uscode.house.gov/view.xhtml?path=/prelim@title29/chapter8&edition=prelim>, (accessed May 21, 2020).

²³⁶ Ibid.

²³⁷ Ibid.

²³⁸ Wage and Hour Division of the United States Department of Labor, Handy Reference Guide to the Fair Labor Standards Act, <https://www.dol.gov/agencies/whd/compliance-assistance/handy-reference-guide-flsa#1>, (accessed May 21, 2020).

factory or mine and any hazardous work under Article 24.²³⁹ The Constitution of India, 1950 aims to protect the fundamental rights and human dignity of all employees and includes provisions on human trafficking because it violates the law and abuses the fundamental rights and dignity of humans. Accordingly, human trafficking is prohibited under Article 23(1)²⁴⁰ of the Constitution of India, 1950 and includes beggars, slavery, and forced labor. In contrast, the Constitution of the Kingdom of Thailand, B.E. 2560 does not contain such provisions. Hence, two regulations on child labor are provided by the national labor standards of the Thai and Indian governments: the Labour Protection Act, B.E. 2541 and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, respectively.

1. Definitions

The Labour Protection Act, B.E. 2541, Chapter 4 contains provisions on the regulation of child labor since there is no separate legislation. The Act includes conditions for the employment of children and the protection of their fundamental rights. Unfortunately, the Labour Protection Act, B.E. 2541 does not provide for the terms “child” and “child labor” while the Child Protection Act, B.E. 2546 provides a meaning for the term “child” as an individual under the age of 18 years but it excludes becoming *sui juris* due to marriage under Section 4, paragraph 1.²⁴¹ Furthermore, the Indian regulations on child labor, known as the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 provides a meaning for the term “child” as an individual below the age of 14 years under Article 2(ii).²⁴² However, the Act does not provide a meaning for the term “child labor” like the Labour Protection Act, B.E. 2541 of Thailand.

²³⁹ Indian Government, The Constitution of India, https://www.india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf, (accessed May 21, 2020).

²⁴⁰ Ibid.

²⁴¹ Office of the Council of State, The Child Protection Act, B.E. 2546, http://web.krisdika.go.th/data/outsitedata/outside21/file/CHILD_PROTECTION_ACT_B.E._2546_.pdf, (accessed May 21, 2020).

²⁴² India Code, The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, https://www.indiacode.nic.in/bitstream/123456789/1848/5/a1986_61.pdf, (accessed May 21, 2020).

Since the regulations in neither Thailand nor India provide a meaning for the term “child labor”, the respective governments should define this term in their legislation rather than just the term “child” to protect the rights and benefits of child employees. This would avoid potential legal issues concerning the wide interpretation of the term “child labor” and offer greater protection to child employees.

2. Age

The Labour Protection Act, B.E. 2541 of Thailand, Section 44 prohibits the employment of children under the age of 15 years.²⁴³ Likewise, the Constitution of India, 1950 prohibits the employment of children below the age of 14 years in any sector, mining, or hazardous works under Article 24.²⁴⁴ Similarly, the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 prohibits the employment of children in any work or process under Article 3²⁴⁵ but does not state a minimum age for employment.

3. Types of Work

The Child and Adolescent Labour (Prohibition and Regulation) Act, 1938 provides for children to help a family member or parent with any non-hazardous work after school or during the weekend, or as an artist in the entertainment and advertising sector to be excluded under Article 3(2)(a)(b), respectively.²⁴⁶ Likewise, the Labour Protection Act, B.E. 2541 prohibits the employment of children below the age of

²⁴³ Office of the Council of State, The Labour Protection Act, B.E.2541, http://web.krisdika.go.th/data/outsitedata/outsite21/file/LABOUR_PROTECTION_ACT_B.E._2541.pdf, (accessed May 21, 2020).

²⁴⁴ Indian Government, The Constitution of India, https://www.india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf, (accessed May 21, 2020).

²⁴⁵ India Code, The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, https://www.indiacode.nic.in/bitstream/123456789/1848/5/a1986_61.pdf, (accessed May 21, 2020).

²⁴⁶ Ibid.

18 years under Section 49²⁴⁷ to avoid hindering their growth and development: physical, mental, and moral. For instance, metal production, smelling, blowing, casting, forging, and pressing, as well as any works involving heat, cold, vibration, sound, and abnormal lighting which may be harmful. Furthermore, any hazardous work relating to chemicals, including any toxic materials, explosives, or inflammable products, excluding working in a fuel oil service station. Children are also prohibited from any work involving poisonous microorganisms, including viruses, bacteria, fungi, or other microorganisms, controlling or driving hoists or cranes, any work involving electrical or mechanical saws, any work performed underground, underwater, in a cavern, tunnel, or crater of a mountain. The legislation also includes the prohibition of any works using 10 meters or more of scaffolding, any works involving radioactivity, cleaning machines or engines while in operation, and any works prescribed under the Ministerial Regulations. Additionally, Section 50²⁴⁸ of the Labour Protection Act, B.E. 2541 prohibits the employment of children below the age of 18 years in some places of work such as butchers, stables, abattoirs, casinos or gambling houses, and entertainment places established under the laws of entertainment, and any other places prescribed under the Ministerial Regulations. In contrast, the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 does not contain such provisions.

4. Wage*

The Labour Protection Act, B.E. 2541 does not contain any provisions regarding a minimum wage for child employees but employers cannot pay wages to someone other than the child employee. Moreover, employers cannot request or receive any guarantee for any purposes from the child employee under the provisions of Section 51.²⁴⁹ However, employers can pay the wages of the child employee to their parents or guardians prior to the commencement of employment or during the period

²⁴⁷ Office of the Council of State, The Labour Protection Act, B.E.2541, at http://web.krisdika.go.th/data/outsitedata/outside21/file/LABOUR_PROTECTION_ACT_B.E._2541.pdf, (accessed May 21, 2020).

²⁴⁸ Office of the Council of State, The Labour Protection Act, B.E.2541, http://web.krisdika.go.th/data/outsitedata/outside21/file/LABOUR_PROTECTION_ACT_B.E._2541.pdf, (accessed May 21, 2020).

²⁴⁹ Ibid.

of the child's employment. Moreover, employers cannot deduct any payments or benefits from the wages of the child employee when the wages are due. Additionally, the child employee has the right to take leave by giving the reason for doing so in advance and also has a duty to provide a document supporting the reason for such leave, if available. Furthermore, employers have a duty to pay wages to the child employee during their leave at the normal rate but not exceeding 30 days in each year under Section 52 of the Act.²⁵⁰ Similarly, the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 contains no provisions for a minimum wage for child employees.

5. Working Hours

The Labour Protection Act, B.E. 2541, Section 46 contains provisions to regulate the working hours of child employees including a rest period during working hours of not less than one hour in each day but not exceeding four hours, without any disturbance, as prescribed by the employer.²⁵¹ The employer cannot request a child employee below the age of 18 years to work between the hours of 22:00 and 06:00 hours according to Section 47, paragraph 1 of the Act.²⁵² However, a child employee below the age of 18 years can work under supervision with the written permission of the Director-General or his/her designate. Additionally, the employer can employ children below the age of 18 years in motion pictures or plays as an actor or actress but should provide appropriate rest periods under Section 47, paragraph 2 of the Act.²⁵³ The Act also prohibits children to work during holidays, including working overtime under Section 48.²⁵⁴ Thus, the employer cannot request a child to work overtime or while on holiday. Meanwhile, the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 prohibits adolescents from working between 19:00 and 08:00 hours, overtime, and

²⁵⁰ Office of the Council of State, The Labour Protection Act, B.E.2541, http://web.krisdika.go.th/data/outside/outside21/file/LABOUR_PROTECTION_ACT_B.E._2541.pdf, (accessed May 21, 2020).

²⁵¹ Ibid.

²⁵² Ibid.

²⁵³ Ibid.

²⁵⁴ Ibid.

in an establishment on any day when they have already been working in another establishment under Article 7(4)(5)(6).²⁵⁵ Furthermore, the child employee is prohibited from working more than six hours under Article 7(3).²⁵⁶ Similarly, all adolescent employees are permitted to have one day's holiday a week under Article 8.²⁵⁷

6. Welfare

The Labour Protection Act, B.E. 2541 provides for child employees under the age of 18 years to have the right to attend any meetings, seminars, or training sessions to improve or boost the quality of their life and work. This also includes any meetings, seminars, or training sessions managed by educational institutes, the government, or any private agencies authorized by the Director-General under Section 52.²⁵⁸ Likewise, the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 requires rules to be made for the health and safety of child and adolescent employees, concerning cleanliness, disposal of waste and effluents, ventilation and temperature, dust and fumes, artificial humidification, lighting, drinking water, latrines and urinals, spittoons, fencing off machinery, working at or near machinery in motion, etc. under Article 13(1)(2).²⁵⁹

²⁵⁵ India Code, The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, https://www.indiacode.nic.in/bitstream/123456789/1848/5/a1986_61.pdf, (accessed May 21, 2020)

²⁵⁶ India Code, The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, https://www.indiacode.nic.in/bitstream/123456789/1848/5/a1986_61.pdf, (accessed May 21, 2020).

²⁵⁷ Ibid.

²⁵⁸ Office of the Council of State, The Labour Protection Act, B.E.2541, http://web.krisdika.go.th/data/outsitedata/outside21/file/LABOUR_PROTECTION_ACT_B.E._2541.pdf, (accessed May 21, 2020).

²⁵⁹ India Code, The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, https://www.indiacode.nic.in/bitstream/123456789/1848/5/a1986_61.pdf, (accessed May 21, 2020).

3.3 Conclusion

This chapter is divided into two sections: international regulations and national regulations. Three international regulations operate under the ILO and the UN: the Minimum Age Convention, 1973 (No.138), the Worst Forms of the Child Labour Convention, 1999 (No.182) and the United Nations Convention on the Rights of the Child (UNCRC). These conventions aim to provide and protect the rights and benefits of children, including child employees as minors and innocents. Governments have a duty to provide national regulations to comply with the international conventions they have ratified. Similarly, there are three national regulations on child labor in the United States, Thailand, and India. Actually, the regulations aim to impose employment conditions and protect the fundamental rights of the child because many children are violated and exploited. For instance, forced labor, work without pay, low wages, working in hazardous conditions, sexual exploitation: prostitution, pornography, and sexual photography. In addition, the national regulations provide standards for the employment of children, such as age, type of work, wage, working hours, and welfare. However, in contrast to the United States and India, the regulations on child labor in Thailand are not provided separately. In the next chapter, the national regulations in the United States, Thailand, and India, are explained comparatively.

Chapter 4

Comparison and Analysis of the Regulations on Child Labor

In the previous chapter, the national and international regulations in the United States, Thailand, and India were discussed in respect of child labor. These regulations aim to protect the rights and benefits of children and child employees, while also providing conditions of employment involving age, type of work, wage, working hours, and welfare. Legal issues also arise regarding both narrow and wide interpretation of the regulations, especially at the national level, due to the lack of a definitive meaning for the terms “child” and “child labor”. It is essential to define these terms to determine their scope. Moreover, many children are employed to work in the entertainment industry as child stars, while in contrast, the regulations prohibit child labor. This indicates the existence of conflict in the laws concerning age. Hence, this chapter compares the national regulations in the United States, Thailand, and India and examines the legal issues involved with conflicting laws and their narrow or wide interpretation.

4.1 Analysis of the Definition of the Term “Child Labour” under the Fair Labor Standards Act, 1938 of the United States, the Labour Protection Act, B.E. 2541 of Thailand, and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 of India

There is none of regulation provide the definition of the term “child labour”. According to, the Congress Record Volume 143, Issue 125 (September 18, 1997), page S9631²⁶⁰ meaning of the term “child labour” is also not defined. On the other hand, the term “child labour” is defined as any works which is performed by teenagers.²⁶¹

²⁶⁰ United States Government Information, CONGRESSIONAL RECORD -- SENATE, <https://www.govinfo.gov/content/pkg/CREC-1997-09-18/pdf/CREC-1997-09-18-pt1-PgS9631-2.pdf>, (accessed May 21, 2020).

²⁶¹ Shodhganga, CHAPTER – VII CHILD LABOUR IN UNITED STATES OF AMERICA, UK, RUSSIA, CHINA, SOUTH AFRICA, SOUTH ASIA, AND OTHER COUNTRIES: A COMPARATIVE ANALYSIS, https://shodhganga.inflibnet.ac.in/bitstream/10603/95694/15/15_chapter%207.pdf, (accessed May 21, 2020).

Besides, the definition of the term “child labour” is based on the Minimum Wage Convention, 1973 (No.138)²⁶² under the ILO. Hence it means none of regulation on child labour concern on providing meaning of the term “child labour”.

Table 1 Analysis the Definition of the term “child labour” under the Regulations on Child Labour; the Fair Labour Standards Act, 1938, the Labour Protection Act, B.E. 2541, and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

| Analysis the Definition of the Term “Child Labour” under the Fair Labor Standards Act, 1938, the Labour Protection Act, B.E. 2541, and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 | | |
|---|--|---|
| Definition of Child labour | | |
| The Fair Labor Standards Act, 1938 of the United States | The Labour Protection Act, B.E. 2541 of Thailand | The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 of India |
| - | - | - |

4.2 Analysis of the Definition of the Term “Child” under the Fair Labor Standards Act, 1938 of the United States, the Labour Protection Act, B.E. 2541 of Thailand, and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 of India

Article 2(ii) of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 of India defines meaning of the term “child” as an individual who has the age below 14 years.²⁶³ In contrast, the Fair Labor Standards Act, 1938 (FLSA) of the United

²⁶² International Labour Organization, C138 – Minimum Age Convention, 1973 (No.138), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P121_00_ILO_CODE:C138, (accessed May 21, 2020).

²⁶³ India Code, The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, https://www.indiacode.nic.in/bitstream/123456789/1848/5/a1986_61.pdf, (accessed May 21, 2020).

States does not provide meaning of the term “child labour” but it is based on the Minimum Age Convention, 1973 (No.138)²⁶⁴ under the ILO. Likewise, meaning of the term “child” is not provided under the Labour Protection Act, B.E. 2541 of Thailand while the Child Protection Act, B.E. 2546 defines the term “child” as an individual being below 18 years of the age but it excludes becoming sui juris due to marriage under Section 4 paragraph 1.²⁶⁵ Thus, the child labour regulation of India; the Child and Adolescent Labour (Prohibition and Regulation) legislates meaning of the term “child”.

Table 2 Analysis the Definition of the term “Child” under the Fair Labour Standards Act, 1938, the Labour Protection Act, B.E. 2541, and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

| Analysis the Definition of the Term “Child” under the Fair Labor Standards Act, 1938, the Labour Protection Act, B.E. 2541, and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 | | |
|--|--|---|
| Definition of Child | | |
| The Fair Labor Standards Act, 1938 of the United States | The Labour Protection Act, B.E. 2541 of Thailand | The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 of India |
| - | - | An individual under the age of 14 years under Article 2(ii) ²⁶⁶ |

²⁶⁴ International Labour Organization, C138 – Minimum Age Convention, 1973 (No.138), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138, (accessed May 21, 2020).

²⁶⁵ Office of the Council of State, The Child Protection Act, B.E. 2546, http://web.krisdika.go.th/data/outsitedata/outside21/file/CHILD_PROTECTION_ACT_B.E._2546.pdf, (accessed May 21, 2020).

²⁶⁶ India Code, The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, https://www.indiacode.nic.in/bitstream/123456789/1848/5/a1986__61.pdf, (accessed May 21, 2020).

4.3 Analysis of the Age under the Fair Labor Standards Act, 1938 of the United States, the Labour Protection Act, B.E. 2541 of Thailand, and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 of India

The age of employment of child labour is legislated under the regulations; the Fair Labor Standards Act, 1938 (FLSA) and the Labour Protection Act, B.E. 2541. The Fair Labor Standards Act, 1938 legislates as 14 years of the age for any light work while the age between 17 – 18 years for hazardous work. Besides, the Labour Protection Act, B.E. 2541 prohibits employment of child labour who being below 15 years of the age. It means all children who have the completely 15 years or more shall be employed to work in the area of light work. However, the Child and Adolescent Labor (Prohibition and Regulation) Act, 1986 of India does not provides the age of employment of child labour like the child labour regulations of the United States and Thailand. To sum up, there are two provisions; the Fair Labor Standards Act, 1938 (FLSA) and the Labour Protection Act, B.E. 2541 legislate the minimum age of employment of child labour.

Table 3 Analysis the Age under the Fair Labour Standards Act, 1938, the Labour Protection Act, B.E. 2541, and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

| Analysis the Age under the Fair Labor Standards Act, 1938, the Labour Protection Act, B.E. 2541, and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 | | |
|---|--|---|
| Age | | |
| The Fair Labor Standards Act, 1938 of the United States | The Labour Protection Act, B.E. 2541 of Thailand | The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 of India |
| 14 years for any light work and between 17 and 18 years for hazardous work ²⁶⁷ | 15 years under Section 44 ²⁶⁸ | - |

²⁶⁷ Sarah A. Donovan and Jon O. Shimabukuro, The Fair Labor Standards Act (FLSA) Child Labor Provisions, <https://fas.org/sgp/crs/misc/R44548.pdf>, (accessed May 21, 2020).

²⁶⁸ Office of the Council of State, The Labour Protection Act, B.E.2541, http://web.krisdika.go.th/data/outsitedata/outside21/file/LABOUR_PROTECTION_ACT_B.E._2541.pdf, (accessed May 21, 2020).

4.4 Analysis of the Type of Work under the Fair Labor Standards Act, 1938 of the United States, the Labour Protection Act, B.E. 2541 of Thailand, and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 of India

Type of work is legislated under the Fair Labor Standards Act, 1938 (FLSA), the Labour Protection Act, B.E. 2541, and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986. Practically, the Fair Labor Standards Act, 1938 prohibits any work which damages dignity of human under 29 U.S. Code §212(c)²⁶⁹ while prohibition of employment of child labour to work in the area of shipping of hot goods is included under 29 U.S. Code §215(a)(1).²⁷⁰ Furthermore, the Labour Protection Act, B.E. 2541 prohibits working in any hazardous work of child labour under Section 49.²⁷¹ Besides, the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 grants children to work for helping their parents and the Act prohibits working of children in the areas of entertainment and advertisement industries under Article 3(2)(a)(b).²⁷²

²⁶⁹ Wage and Hour Division of the United States Department of Labor, The Fair Labor Standards Act of 1938, As Amended, <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FairLaborStandAct.pdf>, (accessed May 21, 2020).

²⁷⁰ Ibid.

²⁷¹ Office of the Council of State, The Labour Protection Act, B.E.2541, http://web.krisdika.go.th/data/outsitedata/outside21/file/LABOUR_PROTECTION_ACT_B.E._2541.pdf, (accessed May 21, 2020).

²⁷² India Code, The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, https://www.indiacode.nic.in/bitstream/123456789/1848/5/a1986__61.pdf, (accessed May 21, 2020).

Table 4 Analysis the Type of Work under the Fair Labour Standards Act, 1938, the Labour Protection Act, B.E. 2541, and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

| Analysis the Type of Work under the Fair Labor Standards Act, 1938, the Labour Protection Act, B.E. 2541, and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 | | |
|--|--|---|
| Type of Work | | |
| The Fair Labor Standards Act, 1938 of the United States | The Labour Protection Act, B.E. 2541 of Thailand | The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 of India |
| Any work which damages human dignity under 29 U.S. Code §212(c) ²⁷³ The shipping of hot goods is prohibited under 29 U.S. Code §215(a)(1) respectively | Hazardous work is prohibited under Section 49 ²⁷⁴ | Any work to help a parent and any work in the area of entertainment and advertising is exempt under Article 3(2)(a)(b) ²⁷⁵ |

²⁷³ Wage and Hour Division of the United States Department of Labor, The Fair Labor Standards Act of 1938, As Amended, <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FairLaborStandAct.pdf>, (accessed May 21, 2020).

²⁷⁴ Office of the Council of State, The Labour Protection Act, B.E.2541, http://web.krisdika.go.th/data/outsitedata/outside21/file/LABOUR_PROTECTION_ACT_B.E._2541.pdf, (accessed May 21, 2020).

²⁷⁵ India Code, The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, https://www.indiacode.nic.in/bitstream/123456789/1848/5/a1986__61.pdf, (accessed May 21, 2020).

4.5 Analysis of the Minimum Wage under the Fair Labor Standards Act, 1938 of the United States, the Labour Protection Act, B.E. 2541 of Thailand, and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 of India

The Minimum Wage is legislated under the Fair Labour Standards Act, 1938 (FLSA) as 29 U.S. Code §206 (a)(1)(A)(B)(C).²⁷⁶ In contrast, the Labour Protection Act, B.E. 2541 and the Child and Adolescent Labour (Prohibition and Regulation), 1986 does not provide the minimum wage for child labour. Indeed, it should be legislated under the regulations because it relates benefits of children and it is also fundamental rights of child labour.

Table 5 Analysis the Minimum Wage under the Fair Labour Standards Act, 1938, the Labour Protection Act, B.E. 2541, and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

| Analysis the Minimum Wage under the Fair Labor Standards Act, 1938, the Labour Protection Act, B.E. 2541, and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 | | |
|--|--|---|
| Minimum Wage | | |
| The Fair Labor Standards Act, 1938 of the United States | The Labour Protection Act, B.E. 2541 of Thailand | The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 of India |
| \$4.24 per hour under U.S. Code as 29 U.S. Code §206 (a)(1)(A)(B)(C) ²⁷⁷ | - | - |

²⁷⁶ Wage and Hour Division of the United States Department of Labor, The Fair Labor Standards Act of 1938, As Amended, <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FairLaborStandAct.pdf>, (accessed May 21, 2020).

²⁷⁷ Wage and Hour Division of the United States Department of Labor, The Fair Labor Standards Act of 1938, As Amended, <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FairLaborStandAct.pdf>, (accessed May 21, 2020).

4.6 Analysis of the Working Hour under the Fair Labor Standards Act, 1938 of the United States, the Labour Protection Act, B.E. 2541 of Thailand, and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 of India

The Fair Labor Standards Act, 1938 grants children to work but working hours shall not exceeding 44 hours per week under 29 U.S. Code §207(2)(A)(B)(C).²⁷⁸ Likewise, the Labour Protection Act, B.E. 2541 legislates working hours of child labour as employers cannot ask child employee work during 22:00 – 06:00 while working on holiday and overtime are prohibited under Section 47 paragraph 1 and Section 48²⁷⁹ respectively. On the other hand, the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 prohibits working between 19:00 - 08:00 hours of adolescent labour under Article 7(4)(5)(6)²⁸⁰ while prohibition of working hours more than six hours of child labour is included under Article 7(3).²⁸¹

²⁷⁸ Office of the Law Revision Counsel, United States Code, 29 USC Ch. 8 FAIR LABOR STANDARDS, <https://uscode.house.gov/view.xhtml?path=/prelim@title29/chapter8&edition=prelim>, (accessed May 21, 2020).

²⁷⁹ Office of the Council of State, The Labour Protection Act, B.E.2541, http://web.krisdika.go.th/data/outsitedata/outside21/file/LABOUR_PROTECTION_ACT_B.E._2541.pdf, (accessed May 21, 2020).

²⁸⁰ India Code, The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, https://www.indiacode.nic.in/bitstream/123456789/1848/5/a1986_61.pdf, (accessed May 21, 2020).

²⁸¹ Ibid.

Table 6 Analysis the Working Hour under the Fair Labour Standards Act, 1938, the Labour Protection Act, B.E. 2541, and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

| Analysis the Working Hour under the Fair Labor Standards Act, 1938, the Labour Protection Act, B.E. 2541, and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 | | |
|--|---|--|
| Working Hour | | |
| The Fair Labor Standards Act, 1938 of the United States | The Labour Protection Act, B.E. 2541 of Thailand | The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 of India |
| Not exceeding 44 hours per week under 29 U.S. Code §207(2)(A)(B)(C) ²⁸² | Prohibited of working between 22:00 and 06:00 hours under Section 47 paragraph 1 ²⁸³ Working during holidays and overtime is prohibited under Section 48 ²⁸⁴ | Working between 19:00 and 08:00 hours of Adolescent under Article 7(4)(5)(6). ²⁸⁵ Working more than six hours of child labour under Article 7(3). ²⁸⁶ |

²⁸² Office of the Law Revision Counsel, United States Code, 29 USC Ch. 8 FAIR LABOR STANDARDS. <https://uscode.house.gov/view.xhtml?path=/prelim@title29/chapter8&edition=prelim>, (accessed May 21, 2020).

²⁸³ Office of the Council of State, The Labour Protection Act, B.E.2541. http://web.krisdika.go.th/data/outsitedata/outside21/file/LABOUR_PROTECTION_ACT_B.E._2541.pdf, (accessed May 21, 2020).

²⁸⁴ Ibid.

²⁸⁵ India Code, The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986. https://www.indiacode.nic.in/bitstream/123456789/1848/5/a1986_61.pdf, (accessed May 21, 2020).

²⁸⁶ Ibid.

4.7 Analysis of the Welfare under the Fair Labor Standards Act, 1938 of the United States, the Labour Protection Act, B.E. 2541 of Thailand, and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 of India

The Fair Labor Standards Act, 1938 does not provide welfare to child labour due to status of provision because the Act is federal law which is legislated to provide the minimum standard for employment of child labour in the United States. It means the conditions which relate to welfare elements like holiday pay, vacations, pay leave, or sick pay are not required to be legislated under the provision,²⁸⁷ according to the Wage and Hour Division. However, the Labour Protection Act, B.E. 2541 legislates training skills and joining seminar under Section 52²⁸⁸ instead of element welfares like cleanliness, disposal of water and effluent, ventilation and temperature, dust and fumes, artificial humidification, lighting, drinking water, latrines and urinals, spittoons, fencing off machinery, working at or near machinery in motion, etc. which are legislated under Article 13(1)(2)²⁸⁹ of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.

²⁸⁷ Wage and Hour Division of the United States Department of Labor, Handy Reference Guide to the Fair Labor Standards Act, <https://www.dol.gov/agencies/whd/compliance-assistance/handy-reference-guide-flsa#1>, (accessed May 21, 2020)

²⁸⁸ Office of the Council of State, The Labour Protection Act, B.E.2541, http://web.krisdika.go.th/data/outsitedata/outside21/file/LABOUR_PROTECTION_ACT_B.E._2541.pdf, (accessed May 21, 2020).

²⁸⁹ India Code, The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, https://www.indiacode.nic.in/bitstream/123456789/1848/5/a1986__61.pdf, (accessed May 21, 2020).

Table 7 Analysis the Welfare under the Fair Labour Standards Act, 1938, the Labour Protection Act, B.E. 2541, and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

| Analysis the Welfare under the Fair Labor Standards Act, 1938, the Labour Protection Act, B.E. 2541, and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 | | |
|---|--|---|
| Welfare | | |
| The Fair Labor Standards Act, 1938 of the United States | The Labour Protection Act, B.E. 2541 of Thailand | The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 of India |
| - | Training skills and joining seminars under Section 52 ²⁹⁰ | Cleanliness, disposal of water and effluent, ventilation and temperature, dust and fumes, artificial humidification, lighting, drinking water, latrines and urinals, spittoons, fencing off machinery, working at or near machinery in motion, etc. under Article 13(1)(2) ²⁹¹ |

²⁹⁰ Office of the Council of State, The Labour Protection Act, B.E.2541, http://web.krisdika.go.th/data/outsitedata/outside21/file/LABOUR_PROTECTION_ACT_B.E._2541.pdf, (accessed May 21, 2020).

²⁹¹ India Code, The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, https://www.indiacode.nic.in/bitstream/123456789/1848/5/a1986__61.pdf, (accessed May 21, 2020).

4.8 Problems Concerning the Scope of Definition

Although, none of the regulations in the United States, Thailand, or India provide a definition for the term “child labor”, two regulations in the United States and Thailand provide a meaning for the term “child”. However, the Child and Adolescent Labour (Prohibitions and Regulation) Act, 1986 in India provides a meaning for the term “child” as an individual below the age of 14 years under Article 2(ii).²⁹² Likewise, the regulations in Thailand outside the area of labor regulation provides a meaning for the term “child” as a minor under the age of 18 years but it excludes becoming *sui juris* due to marriage under Section 4, paragraph 1²⁹³ of the Child Protection Act, B.E. 2546. According to Jennifer Bol, child means an individual who is ready to take on the responsibilities of an adult.²⁹⁴ However, Article 1²⁹⁵ of the United Nations Convention on the Rights of the Child (UNCRC) provides a meaning for the term “child” as all humans under the age of 18 years. Furthermore, the ILO provides a meaning for the term “child labor” as any work which damages the childhood, potential, and dignity of children and harms their growth and development: physical and mental and health.²⁹⁶

Black’s Law Dictionary, 11th Edition provides a meaning for the terms “child” and “child labor”. Child means an individual under the age of majority or an individual

²⁹² Ibid.,

²⁹³ Office of the Council of State, The Child Protection Act, B.E. 2546, http://web.krisdika.go.th/data/outside/outside21/file/CHILD_PROTECTION_ACT_B.E._2546.pdf, (accessed May 21, 2020).

²⁹⁴ Jennifer Bol, Using International Law to Fight Child Labor: A Case Study of Guatemala and the Inter - American System, <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1370&context=auilr&httpsredir=1&referrer>, (accessed May 21, 2020)

²⁹⁵ United Nations Human Rights Office of the High Commissioner, Convention on the Rights of the Child, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>, (accessed May 21, 2020).

²⁹⁶ International Labour Organization, Definition: What is meant by child labour?, http://www.ilo.org/moscow/areas-of-work/child-labour/WCMS_249004/lang-en/index.htm, (accessed May 21, 2020).

who is under the age of 14 years.²⁹⁷ Child labor means the employment of any person who is a minor and includes violation and exploitation, slavery, child trafficking, drug trafficking, forced labor, compulsory labor; debt bondage, and sexual performances, prostitution and pornography.²⁹⁸ However, these meanings are not included in the current legislature and cannot be enforced.

4.9 Problem Concerning Age

Age is an essential qualification for employment because it can indicate which type of work is appropriate for the employee, especially a child. Some types of work are prohibited by the regulations because it is harmful to the development and health of the child employee such as hazardous work. Although the Labour Protection Act, B.E. 2541 provides the minimum age for child employees as 15 years under Section 44²⁹⁹, it cannot solve the child labor issue in Thailand. While, the minimum age of employment of child labour which is international labour standard is legislated under Article 2 paragraph 1³⁰⁰ of the Minimum Age Convention, 1973 (No. 138) is not be less than 15 years or after complete compulsory education. Moreover, all children who have the age less than 18 years are prohibited to work in the area of hazardous work under Article 2³⁰¹ of the Worst Forms of Child Labour Convention, 1999 (No.182) because it harms to development and growth; physical, mental, and health.

²⁹⁷ Bryan A. Garner, Black's Law Dictionary, 11th ed. (United States: Thomson Reuters), p.299.

²⁹⁸ Ibid., p.302.

²⁹⁹ Office of the Council of State, The Labour Protection Act, B.E.2541, http://web.krisdika.go.th/data/outsitedata/outsite21/file/LABOUR_PROTECTION_ACT_B.E._2541.pdf, (accessed May 21, 2020).

³⁰⁰ International Labour Organization, C138 - Minimum Age Convention, 1973 (No.138), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12_100_ILO_CODE:C138, (accessed May 21, 2020).

³⁰¹ International Labour Organization, C182 – Worst Forms of Child Labour Convention, 1999 (No.182), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182, (accessed May 21, 2020).

Obviously, many children are employed to work in the entertainment and advertising industries. For example, the twin sons of a famous actress perform in the advertising industry as presenters for BabyLove,³⁰² Samsung Air Condition,³⁰³ Maggi,³⁰⁴ and Enfagrow.³⁰⁵ These child presenters are under the age of 15 years. Indeed, such employment violates Section 44³⁰⁶ of the Labour Protection Act, B.E. 2541 because the Act prohibits the employment of children under the age of 15 years. However, Section 24³⁰⁷ of Thai Civil and Commercial Code allows an individual who is a minor to perform under the appropriate conditions of life and need. This means that child presenters can work in the advertising industry under Section 24³⁰⁸ of the Civil and Commercial Code. This may cause legal issues due to the conflict between Section 44³⁰⁹ of the Labour Protection Act, B.E. 2541 and Section 24³¹⁰ of the Civil and Commercial Code. To avoid such

³⁰² New18, It is too cute, Saifa – Bhaya Helps His Mother to Make Money, <https://www.newtv.co.th/news/12834>, (accessed May 21, 2020).

³⁰³ Samsung Thailand, Samsung WindFree™, <https://www.youtube.com/watch?v=u6m6ADgO170&t=94s>, (accessed May 21, 2020).

³⁰⁴ Facebook, Maggi Thailand Page, <https://www.facebook.com/MaggiThailand/>, (accessed May 21, 2020).

³⁰⁵ Marketing Oops, UHT Enfagrow presents new presenters, <https://www.marketingoops.com/media-ads/traditional/tvc/enfagrow/>, (accessed May 21, 2020).

³⁰⁶ Office of the Council of State, The Labour Protection Act, B.E.2541, http://web.krisdika.go.th/data/outsitedata/outside21/file/LABOUR_PROTECTION_ACT_B.E._2541.pdf, (accessed May 21, 2020).

³⁰⁷ Thailand Lawyer, Natural Persons (Section 15-36), <https://library.siam-legal.com/thai-law/civil-and-commercial-code-natural-persons-sections-15-36/#tabs-tab-title-2>, (accessed May 21, 2020).

³⁰⁸ Ibid.

³⁰⁹ Office of the Council of State, The Labour Protection Act, B.E.2541, http://web.krisdika.go.th/data/outsitedata/outside21/file/LABOUR_PROTECTION_ACT_B.E._2541.pdf, (accessed May 21, 2020).

³¹⁰ Thailand Lawyer, Natural Persons (Section 15-36), <https://library.siam-legal.com/thai-law/civil-and-commercial-code-natural-persons-sections-15-36/#tabs-tab-title-2>, (accessed May 21, 2020).

conflict, the Labour Protection Act, B.E. 2541 and the Civil and Commercial Code should be harmonized.

Additionally, the appropriate conditions of life and need under Section 24³¹¹ of the Civil and Commercial Code are considered according to the social and economic status of the minor, rather than the appropriate conditions under Section 24³¹² of Civil and Commercial Code.³¹³ Likewise, the juristic act of the minor must be essential, such as food, clothes, medicine, and habitat.³¹⁴ Moreover, the term “need” under the appropriate conditions must include working and education.³¹⁵ However, the appropriate conditions of life and need should be considered in each case and be reasonable according to Section 1574³¹⁶ of the Civil and Commercial Code, and the Supreme Court Judgment No.856–857/2497³¹⁷ and Supreme Court Judgment No.2416/2534³¹⁸, according to Monnamas Sumanotayan.³¹⁹

³¹¹ Ibid.

³¹² Ibid.

³¹³ Monnamas Sumanotayan, MINOR’S JURISTIC ACTS WHICH ARE SUITABLE FOR HIS CONDITIONS IN LIFE AND ACTUALLY REQUIRED FOR HIS REASONABLE NEEDS, http://ethesisarchive.library.tu.ac.th/thesis/2016/TU_2016_5801031294_6391_5244.pdf, (accessed May 21, 2020).

³¹⁴ Ibid.

³¹⁵ Ibid.

³¹⁶ Thailand Lawyer, Parent Child (Section 1561–1584/1), <https://library.siam-legal.com/thai-law/civil-and-commercial-code-parent-child-section-1561-1584-1/>, (accessed May 21, 2020).

³¹⁷ Division of Assistant Justice of the Supreme Court, The Supreme Court Judgment No.856–857/2497, <https://deka.in.th/view-79839.html>, (accessed May 21, 2020).

³¹⁸ Ibid.

³¹⁹ Monnamas Sumanotayan, MINOR’S JURISTIC ACTS WHICH ARE SUITABLE FOR HIS CONDITIONS IN LIFE AND ACTUALLY REQUIRED FOR HIS REASONABLE NEEDS, http://ethesisarchive.library.tu.ac.th/thesis/2016/TU_2016_5801031294_6391_5244.pdf, (accessed May 21, 2020).

4.10 Problem Concerning Minimum Wage Rate

To avoid the minimum wage rate issue on child labour, the minimum wage rate should be legislated or provided under the Labour Protection Act, B.E. 2541 or the National Wage Committee's Notification of the Ministry of Labour because there are many child labour have to work without pay or low paid and it is violated rights of the children. It means the children are forced to work by the employer and it seems to be trafficking in child. In contrast, the minimum wage rate of adult labour is provided by the National Wage Committee's Notification on Minimum Wage Rate (No.10) between 313 – 336 Baht.³²⁰ And, the minimum wage rate based on cost of living and type of work,³²¹ according to ILO. Thus, it means the National Wage Committee does not concern on employment of child labour as much as possible due to lack of providing the minimum wage of child labour. Many sectors; agricultural, seafood, and service sectors, employ child labour to work due to cheap labour. Actually, providing of the minimum wage rate for child labour shall reduce poverty issue because the employer has duty to pay wage to the child employee under the regulation and it is income distribution to rural areas in Thailand.

While, the Fair Labor Standards Act, 1938 of the United States provides the minimum wage rate for child labour under 29 U.S. Code §206 (a)(1)(A)(B)(C).³²² And, it is provided by \$4.24 per hour without any condition. On the other hand, the child labour regulation of India; the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 does not provide the minimum wage rate for child labour. In contrast, there is none of international convention provide the minimum wage rate of child labour as

³²⁰ Ministry of Labour, New Minimum Wage Rate under the National Wage Committee's Notification on Minimum Wage Rate (No.10), <https://www.mol.go.th/en/minimum-wage/>, (accessed May 21, 2020).

³²¹ International Labour Organization, At what level should minimum wages be set?, https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/genericdocument/wcms_210608.pdf, (accessed May 21, 2020).

³²² Wage and Hour Division of the United States Department of Labor, The Fair Labor Standards Act of 1938, As Amended, <https://www.dol.gov/sites/dolgov/files/WHDLegacy/files/FairLaborStandAct.pdf>, (accessed May 21, 2020).

international labour standard because providing the minimum wage rate by international convention seems to be possible due to difference of social context, cost of living, income, and currency. Finally, lacks of providing the minimum wage rate for child labour is caused violation of the fundamental rights and inequality of income distribution because the child labour is violated their rights by working without pay and low paid from the employer. While, working without pay and forcing the children to work seem to be trafficking in child. Hence the minimum wage rate should be provided by the regulation; the Labour Protection Act, B.E. 2541 or the National Wage Committee because it shall reduce minimum wage issue due to employment of child labour, violation of the children's rights, and decreased of inequality of income distribution.

4.11 Problem Concerning Element Welfare

The element welfare is too essential for child labour and it should be provided by the Labour Protection Act, B.E. 2541 because it is the fundamental right of the child labour. Indeed, the Labour Protection Act, B.E. 2541 provides joining seminar and training skill to the child employee instead of providing element welfare, for instance cleanliness, disposal of water and effluent, ventilation and temperature, dust and fumes, artificial humidification, lighting, drinking water, latrines and urinals, spittoons, fencing off machinery, working at or near machinery in motion, etc. as the Indian child labour regulation; the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986. It indicates the Thai child labour regulation; the Labour Protection Act, B.E. 2541 concern on providing training skills more than the element welfare like cleanliness, disposal of water and effluent, ventilation and temperature, dust and fumes, artificial humidification, lighting, drinking water, latrines and urinals, spittoons, fencing off machinery, working at or near machinery in motion, etc., in fact, the element welfare is too essential more than training skill because it relates to quality of life of child labour.

In contrast, the Fair Labor Standards Act, 1938 (FLSA) does not provide the element welfare for child labour. On the other hand, the element welfare which is an essential thing is concerned by the United Nations Convention on the Rights of the Child (UNCRC), and the Convention legislates protection and providing the fundamental rights welfare of the children, for instance health care, clean water, food, good and clean environment, education, and nourishment as the duty of the government under Article 24

paragraph 1 and 2.³²³ Hence, element welfare like cleanliness, disposal of water and effluent, ventilation and temperature, dust and fumes, artificial humidification, lighting, drinking water, latrines and urinals, spittoons, fencing off machinery, working at or near machinery in motion, etc. should be legislated for providing to child labour more than joining seminar or training skill because it relates to quality of life and child labour drive economic growth and maintain GDP of the county. Thus, the government should concern on quality of life of them.

4.12 Conclusion

According to the comparative table, four elements: age, type of work, working time, and welfare are provided for under the Labour Protection Act, B.E. 2541. Indeed, the Act should provide for a minimum wage like the Fair Labor Standards Act, 1938 (FLSA) of the United States because it is an essential part of child labor and will reduce disputes with employers concerning unpaid wages to children. The Labour Protection Act, B.E. 2541 is not sufficiently concerned with welfare since it does not provide for it like the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 of India. For instance, regarding cleanliness, lighting, drinking water, etc. Unfortunately, no meaning is provided for the terms “child” and “child labor” causing legal issues due to its narrow or wide interpretation because the scope of definition is not determined by the regulations. Similarly, the employment of children below the age of 15 years in the advertising industry is subject to the conflicting regulations in Section 44³²⁴ of the Labour Protection Act, B.E. 2541 which prohibits the employment of children under the age of 15 years,

³²³ United Nations High Commissioner for Refugees, Convention of the Rights of the Child, <https://www.unhcr.org/protection/children/50f941fe9/united-nations-convention-rights-child-crc.html>, (accessed May 21, 2020).

³²⁴ Office of the Council of State, The Labour Protection Act, B.E.2541, http://web.krisdika.go.th/data/outsitedata/outside21/file/LABOUR_PROTECTION_ACT_B.E._2541.pdf, (accessed May 21, 2020).

while Section 24³²⁵ of the Civil and Commercial Code allows minors to work under the appropriate conditions of life and need.

Additionally, the Labour Protection Act, B.E. 2541 lacks of providing the minimum wage rate and the element welfare for the child labour, indeed, it is the fundamental rights of the child labour which should be provided and protected under the Act. Besides, the Act should provide cleanliness, disposal of water and effluent, ventilation and temperature, dust and fumes, artificial humidification, lighting, drinking water, latrines and urinals, spittoons, fencing off machinery, working at or near machinery in motion, etc. as the element welfare instead of joining seminar and training skill under Section 52³²⁶ because the Act seems to compel the children to labour market and lacks of concern on protection the fundamental rights of the child labour. Hence, the Labour Protection Act should provide a meaning for the terms “child” and “child labor” and the Labour Protection Act and the regulations should be harmonized to avoid conflict in their interpretation. While, the Labour Protection Act, B.E. 2541 should provide the minimum wage rate and the element welfare to the child labour.

³²⁵ Thailand Lawyer, Natural Persons (Section 15–36), at <https://library.siam-legal.com/thai-law/civil-and-commercial-code-natural-persons-sections-15-36/#tabs-tab-title-2>, (accessed May 21, 2020).

³²⁶ Office of the Council of State, The Labour Protection Act, B.E.2541, http://web.krisdika.go.th/data/outsitedata/outside21/file/LABOUR_PROTECTION_ACT_B.E._2541.pdf, (accessed May 21, 2020).

Chapter 5

Conclusion and Recommendations

5.1 Conclusion

The child labour regulations; the Fair Labor Standards Act, 1938 of the United States, the Labour Protection Act, B.E. 2541 of Thailand, and the Child and Adolescent Labour (Regulation and Prohibition) Act, 1986 of India are mentioned in the comparative way in chapter 4. It indicates none of regulation provide the definition of the term “child labour” and it also means none regulation concern on providing meaning of the term. While, definition of the term “child” is provided under Article 2(ii) the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 of India as any person who are an individual has the age below 14 years.³²⁷ However, the two child labour regulations; the Fair Labor Standards Act, 1938 of the United States and the Labour Protection Act, B.E. 2541 of Thailand do not provide it, indeed, the term “child” should be provided under the regulation to avoid legal issues due to interpretation in the future.

Furthermore, the regulations; the Fair Labor Standards Act, 1938 of the United States and the Labour Protection Act, B.E. 2541 of Thailand concern on the age of employment of child labour. The Fair Labor Standards Act, 1938 provides the minimum age of employment as 14 years for any light work and an individual who has the age between 17 and 18 years shall be employed to work in any hazardous work.³²⁸ While, the Labour Protection Act, B.E. 2541 prohibits employment of children who has the age

³²⁷ India Code, The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, https://www.indiacode.nic.in/bitstream/123456789/1848/5/a1986__61.pdf, (accessed May 21, 2020).

³²⁸ Sarah A. Donovan and Jon O. Shimabukuro, The Fair Labor Standards Act (FLSA) Child Labor Provisions, <https://fas.org/sgp/crs/misc/R44548.pdf>, (accessed May 21, 2020).

below 15 years.³²⁹ On the other hand, the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 of India does not provide it.

Type of work is concerned by legislated under the regulations; the Fair Labor Standards Act, 1938 of the United States, the Labour Protection Act, B.E. 2541 of Thailand, and the Child and Adolescent Labour (Regulation and Prohibition) Act, 1986 of India. The Fair Labor Standard Act. 1938 prohibits employment which is damaged of dignity of human under under 29 U.S. Code §212(c)³³⁰ and any work which is in the area of shipping of hot goods is also prohibited under 29 U.S. Code §215(a)(1).³³¹ While, the Labour Protection Act, B.E. 2541 prohibits any work which is the area of hazardous work under Section 49.³³² And, the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 allow the children to work under the condition; helping the parents but the Act prohibits employment of child labour to work in the areas of entertainment and advertisement industries under Article 3(2)(a)(b).³³³ While, the minimum wage of child labour is legislated under the Fair Labor Standards Act, 1938 of the United States as \$4.24 per hour under 29 U.S. Code §206 (a)(1)(A)(B)(C)³³⁴, in contrast, the Labour Protection Act, B.E. 2541 of Thailand and the Child and Adolescent Labour (Prohibition and

³²⁹ Office of the Council of State, The Labour Protection Act, B.E.2541, http://web.krisdika.go.th/data/outsitedata/outside21/file/LABOUR_PROTECTION_ACT_B.E._2541.pdf, (accessed May 21, 2020).

³³⁰ Wage and Hour Division of the United States Department of Labor, The Fair Labor Standards Act of 1938, As Amended, <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FairLaborStandAct.pdf>, (accessed May 21, 2020).

³³¹ Ibid.

³³² Office of the Council of State, The Labour Protection Act, B.E.2541, http://web.krisdika.go.th/data/outsitedata/outside21/file/LABOUR_PROTECTION_ACT_B.E._2541.pdf, (accessed May 21, 2020).

³³³ India Code, The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, https://www.indiacode.nic.in/bitstream/123456789/1848/5/a1986__61.pdf, (accessed May 21, 2020).

³³⁴ Wage and Hour Division of the United States Department of Labor, The Fair Labor Standards Act of 1938, As Amended, <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FairLaborStandAct.pdf>, (accessed May 21, 2020).

Regulation), 1986 of India do not provide it. Indeed, it should be legislated under the provisions because it relates to benefits and fundamental rights of child labour. It shall reduce child labour issues due to minimum wage rate, forced labour, and trafficking in child.

Working hour is also legislated under the regulations; the Fair Labor Standards Act, 1938 of the United States, the Labour Protection Act, B.E. 2541 of Thailand, and the Child and Adolescent Labour (Regulation and Prohibition) Act, 1986 of India. Working hour of child labour shall not exceeding 44 hours per week under 29 U.S. Code §207(2)(A)(B)(C)³³⁵ under the Fair Labor Standards Act, 1938. While, the Labour Protection Act, B.E. 2541 prohibits working hours of child labour during 22:00 – 06:00, and including working overtime and holiday under Section 47 paragraph 1 and Section 48³³⁶ respectively. Besides, the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 prohibits working during 19:00 - 08:00 hours of adolescent labour under Article 7(4)(5)(6)³³⁷ and working hours more than six hours is also prohibited under Article 7(3).³³⁸

Welfare which is an essential thing and it is also fundamental rights of child labour is legislated under the two provisions; the Labour Protection Act, B.E. 2541 of Thailand and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 of India. The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 provides the element welfare which relates to quality of life and living of child labour like cleanliness, disposal of water and effluent, ventilation and temperature, dust and fumes, artificial humidification, lighting, drinking water, latrines and urinals, spittoons, fencing off

³³⁵ Office of the Law Revision Counsel, United States Code, 29 USC Ch. 8 FAIR LABOR STANDARDS, <https://uscode.house.gov/view.xhtml?path=/prelim@title29/chapter8&edition=prelim>, (accessed May 21, 2020).

³³⁶ Office of the Council of State, The Labour Protection Act, B.E.2541, http://web.krisdika.go.th/data/outsitedata/outside21/file/LABOUR_PROTECTION_ACT_B.E._2541.pdf, (accessed May 21, 2020).

³³⁷ India Code, The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, https://www.indiacode.nic.in/bitstream/123456789/1848/5/a1986__61.pdf, (accessed May 21, 2020).

³³⁸ Ibid.

machinery, working at or near machinery in motion, etc. under Article 13(1)(2).³³⁹ While, the Labour Protection Act, B.E. 2541 also provides welfare like training skill and joining seminar of child labour under Section 52.³⁴⁰ Additionally, providing the element welfare under the Labour Protection Act, B.E. 2541 seems to compel the children to labour market but the element welfare under the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 concerns on quality of life of child labour.

The comparative tables which are mentioned before indicates the Thai child labour regulation; the Labour Protection Act, B.E. 2541 does not concern on protection benefits and fundamental rights of the child labour as much as possible. While, the Act lacks of providing the essential things; definition, age, minimum wage rate, and element welfare and it is mentioned as problems concerning. It is also caused legal issue in the future due to fail to protection and providing the fundamental of child labour and interpretations; narrow and wide. Definitions of the terms “child” and “child labour” should be legislated under the Labour Protection Act, B.E. 2541, in contrast, the Act lacks of providing scope of definitions. Indeed, it is caused interpretations; narrow and wide in the future. While, the two regulations; Section 44³⁴¹ of the Labour Protection Act, B.E. 2541 and Section 24³⁴² of Civil and Commercial Code lacks of legal harmonized due to conflicted of the provisions because Section 44³⁴³ of the Labour Protection Act, B.E. 2541 prohibits employment of the children who have the age below 15 years but

³³⁹ India Code, The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, https://www.indiacode.nic.in/bitstream/123456789/1848/5/a1986__61.pdf, (accessed May 21, 2020).

³⁴⁰ Office of the Council of State, The Labour Protection Act, B.E.2541, http://web.krisdika.go.th/data/outsitedata/outside21/file/LABOUR_PROTECTION_ACT_B.E._2541.pdf, (accessed May 21, 2020).

³⁴¹ Ibid.

³⁴² Thailand Lawyer, Natural Persons (Section 15–36), <https://library.siam-legal.com/thai-law/civil-and-commercial-code-natural-persons-sections-15-36/#tabs-tab-title-2>, (accessed May 21, 2020).

³⁴³ Office of the Council of State, The Labour Protection Act, B.E.2541, http://web.krisdika.go.th/data/outsitedata/outside21/file/LABOUR_PROTECTION_ACT_B.E._2541.pdf, (accessed May 21, 2020).

Section 24 of Civil and Commercial Code grants the children to work under the appropriate conditions; need and life. Obviously, both provisions seem to be conflicted due to age of employment of child labour, indeed, both regulations should be harmonized. On the other hand, the minimum age of employment of child labour which is international labour standard is provided under the Minimum Age Convention, 1973 (No.138), Article 2 paragraph 1³⁴⁴ as the age of children who are employed should not be less than 15 years or complete compulsory education. While, the children who have the age less than 18 years is prohibited to employ to work in the area of hazardous work under Article 2³⁴⁵ of the Worst Forms of Child Labour Convention, 1999 (No.182) due to harms to development and growth of the children; physical, health, and mental.

Moreover, the Labour Protection Act, B.E. 2541 fails to legislate the minimum wage rate of child labour, indeed, it should be provided under the Act to avoid child labour issues due to violation like forced labour, trafficking in child, and working without pay or low – paid from the employers. Sadly, the Act does not concern on the minimum wage rate of child labour which is in the area of the fundamental rights of child labour as much as possible. While, the Labour Protection Act, B.E. 2541 seems to compel the children to labour market due to providing the element welfare like; joining seminar and training skill of child labour. Indeed, the Act should the element welfare like cleanliness, disposal of water and effluent, ventilation and temperature, dust and fumes, artificial humidification, lighting, drinking water, latrines and urinals, spittoons, fencing off machinery, working at or near machinery in motion, etc. should be provided like the Indian child labour regulation; Article 13(1)(2)³⁴⁶ of the Child and Adolescent Labour

³⁴⁴ International Labour Organization, C138 - Minimum Age Convention, 1973 (No.138), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138, (accessed May 21, 2020).

³⁴⁵ International Labour Organization, C182 – Worst Forms of Child Labour Convention, 1999 (No.182), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182, (accessed May 21, 2020).

³⁴⁶ India Code, The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, https://www.indiacode.nic.in/bitstream/123456789/1848/5/a1986__61.pdf, (accessed May 21, 2020).

(Prohibition and Regulation) Act, 1986 because it relates to quality of life and living of child labour.

To sum up, the Thai child labour regulation; the Labour Protection Act, B.E. 2541 lacks of providing the essential things, for instance definition of terms “child” and “child labour”, minimum wage rate, and element welfare, while, the regulations; Section 44³⁴⁷ of the Labour Protection Act, B.E. 2541 and Section 24³⁴⁸ of Civil and Commercial Code also lacks of legal harmonized due to age of employment of child labour. It indicates some problem on child labour issue causes the regulation which lacks of providing and protection the fundamental rights of child labour as much as possible.

5.2 Recommendations

It is the responsibility of the Thai government to resolve the child labor issue, despite it being challenging and complicated. Unfortunately, many children employees are subject to violation, exploitation, forced labor, and human trafficking due to lacks of protection of the regulation; the Labour Protection Act, B.E. 2541³⁴⁹ because the essential things; definitions, minimum wage rate, element welfare are not provided under the Act. While, conflicted of the two regulations; Section 44 of the Labour Protection Act, B.E. 2541 and Section 24³⁵⁰ of Civil and Commercial Code is caused lacks of legal harmonized. It means current law is subject to both wide and narrow interpretation,

³⁴⁷ Office of the Council of State, The Labour Protection Act, B.E.2541, http://web.krisdika.go.th/data/outsitedata/outside21/file/LABOUR_PROTECTION_ACT_B.E._2541.pdf, (accessed May 21, 2020).

³⁴⁸ Thailand Lawyer, Natural Persons (Section 15-36), <https://library.siam-legal.com/thai-law/civil-and-commercial-code-natural-persons-sections-15-36/#tabs-tab-title-2>, (accessed May 21, 2020).

³⁴⁹ Office of the Council of State, The Labour Protection Act, B.E.2541, http://web.krisdika.go.th/data/outsitedata/outside21/file/LABOUR_PROTECTION_ACT_B.E._2541.pdf, (accessed May 21, 2020).

³⁵⁰ Thailand Lawyer, Natural Persons (Section 15-36), <https://library.siam-legal.com/thai-law/civil-and-commercial-code-natural-persons-sections-15-36/#tabs-tab-title-2>, (accessed May 21, 2020).

resulting in legal issues due to the lack of a proper definition for the legal terms and an absence of modernity in law. Hence, it affects the child labor issue in Thailand and the government has a duty to do all it can to provide appropriate regulations to protect the fundamental rights and benefits of child employees.

5.2.1 Recommendations for the Public Sector

1. The government should provide definitions for the terms “child” and “child labor” by amending the Labour Protection Act, B.E. 2541, since it does not currently provide definitions for these terms, meaning that the legislation is open to both narrow and wide interpretation. Obviously, children are protected by the United Nations Convention on the Rights of Child, 2013 (UNCRC)³⁵¹ which is an international standard. Thus, the amendment of the Labour Protection Act should meet international standards to ensure the rights of children in Thailand are fully protected.

2. The Labour Protection Act should be amended to provide a minimum age for the employment of children to work in any industry to reduce conflict under the law. Two regulations are currently subject to conflict: Section 24 of the Civil and Commercial Code and Section 44 of the Labour Protection Act, B.E. 2541 since many minors are employed in the entertainment industry below the age of 15 years. To avoid conflict under the law, the Labour Protection Act should be amended as follows:

1) An individual over the age of 18 years shall be permitted to be employed in hazardous work.

2) An individual between the ages of 15 and 17 years shall be permitted to be employed in any light work, for instance as a mechanical engineer, carpenter, and delivering newspapers or food.

3) An individual between the ages of 10 and 13 years and 13 and 15 years shall be permitted to be employed in any light work, for instance as a make-up artist, hairdresser, photographer, graphic designer, painter, artist, creator of art, hand-crafter, and working for a studio or media publisher.

Additionally, a minor under the age of 10 years shall be permitted to be employed in any light work in the entertainment industry with the permission of a

³⁵¹ UNICEF, Convention on the Rights of the Child 2013, https://www.unicef.org/csr/css/CRC-C-GC-16_en.pdf, (accessed May 21, 2020).

parent or guardian as granted by Section 24 of Civil and Commercial Code. Minors shall also be permitted to carry out housework to help their parents or family.

3. The Labour Protection Act should be amended to provide a minimum wage rate for all child employees, in alignment with the cost-of-living index, rate of inflation, standard of living, cost of production, price of goods and services, business competitiveness, labor productivity, gross national product, and economic and social conditions under Section 87 paragraph 1³⁵² of the Labour Protection Act, B.E. 2541. Currently, the minimum wage rate for adult labor is 313–336 baht per day, according to the National Wage Committee’s Notification on the Minimum Wage Rate (No.10),³⁵³ but there is no such provision for child labor.

4. The Labour Protection Act should be amended to provide the element welfare instead of training skill and joining seminar to child labour, for instance cleanliness, disposal of water and effluent, ventilation and temperature, dust and fumes, artificial humidification, lighting, drinking water, latrines and urinals, spittoons, fencing off machinery, working at or near machinery in motion, etc. like Article 13(1)(2)³⁵⁴ of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 of India because it is in area of the fundamental rights of child labour which should be legislated under the provision.

5.2.2 Recommendations for the Private Sector

1. The private sector should cooperate with the government to educate the children and their parents to know the fundamental rights of the children under the

³⁵² Office of the Council of State, The Labour Protection Act, B.E.2541, http://web.krisdika.go.th/data/outsitedata/outside21/file/LABOUR_PROTECTION_ACT_B.E._2541.pdf, (accessed May 21, 2020).

³⁵³ Minister of Labour, the National Wage Committee’s Notification on New Minimum Wage Rate (No.10), <https://www.mol.go.th/wp-content/uploads/sites/2/2020/01/Prakadwage10-6Jan2020.pdf>, (accessed May 21, 2020).

³⁵⁴ India Code, The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, https://www.indiacode.nic.in/bitstream/123456789/1848/5/a1986_61.pdf, (accessed May 21, 2020).

regulations; the Constitution of the Kingdoms of Thailand, B.E. 2560 and the United Nations Convention on the Rights of the Child (UNCRC).³⁵⁵



³⁵⁵ UNICEF, “Convention on the Rights of the Child 2013,” https://www.unicef.org/csr/css/CRC-C-GC-16_en.pdf, (accessed May 21, 2020).

